

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 111

HOUSE BILL 2141

AN ACT

AMENDING SECTIONS 9-461.05, 9-461.06, 9-462.04, 11-806, 11-829, ARIZONA REVISED STATUTES; AMENDING SECTION 15-2002, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 215, SECTION 3; REPEALING SECTION 15-2002, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 264, SECTION 9; AMENDING SECTIONS 15-2041, 28-8461, 28-8480, 28-8481, 28-8482, 32-2113, 32-2181, 32-2183, 32-2195, 32-2195.03 AND 37-102, ARIZONA REVISED STATUTES; RELATING TO DEVELOPMENT NEAR MILITARY AIRPORTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-461.05, Arizona Revised Statutes, is amended to
3 read:

4 9-461.05. General plans; authority; scope

5 A. Each planning agency shall prepare and the governing body of each
6 municipality shall adopt a comprehensive, long-range general plan for the
7 development of the municipality. The planning agency shall coordinate the
8 production of its general plan with the creation of the state land department
9 conceptual land use plans under title 37, chapter 2, article 5.1 and shall
10 cooperate with the state land department regarding integrating the conceptual
11 state land use plans into the municipality's general land use plan. The
12 general plan shall include provisions that identify changes or modifications
13 to the plan that constitute amendments and major amendments. The plan shall
14 be adopted and readopted in the manner prescribed by section 9-461.06.

15 B. The general plan shall be so prepared that all or individual
16 elements of it may be adopted by the governing body and that it may be made
17 applicable to all or part of the territory of the municipality.

18 C. The general plan shall consist of a statement of community goals
19 and development policies. It shall include maps, any necessary diagrams and
20 text setting forth objectives, principles, standards and plan proposals. The
21 plan shall include the following elements:

22 1. A land use element that:

23 (a) Designates the proposed general distribution and location and
24 extent of such uses of the land for housing, business, industry,
25 agriculture, recreation, education, public buildings and grounds, open
26 space and other categories of public and private uses of land as may be
27 appropriate to the municipality.

28 (b) Includes a statement of the standards of population density and
29 building intensity recommended for the various land use categories covered
30 by the plan.

31 (c) Identifies specific programs and policies that the municipality
32 may use to promote infill or compact form development activity and locations
33 where those development patterns should be encouraged.

34 (d) Includes consideration of air quality and access to incident
35 solar energy for all general categories of land use.

36 (e) Includes policies that address maintaining a broad variety of
37 land uses including the range of uses existing in the municipality when the
38 plan is adopted, readopted or amended.

39 (f) For cities and towns with territory in the vicinity of a military
40 airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461,
41 includes consideration of military airport OR ANCILLARY MILITARY FACILITY
42 operations.

43 2. A circulation element consisting of the general location and
44 extent of existing and proposed freeways, arterial and collector streets,

1 bicycle routes and any other modes of transportation as may be appropriate,
2 all correlated with the land use element of the plan.

3 D. For cities and towns having a population of more than two thousand
4 five hundred persons but less than ten thousand persons and whose population
5 growth rate exceeded an average of two per cent per year for the ten year
6 period before the most recent United States decennial census and for cities
7 and towns having a population of ten thousand or more persons according to
8 the most recent United States decennial census, the general plan shall
9 include, and for other cities and towns the general plan may include:

10 1. An open space element that includes:

11 (a) A comprehensive inventory of open space areas, recreational
12 resources and designations of access points to open space areas and
13 resources.

14 (b) An analysis of forecasted needs, policies for managing and
15 protecting open space areas and resources and implementation strategies to
16 acquire additional open space areas and further establish recreational
17 resources.

18 (c) Policies and implementation strategies designed to promote a
19 regional system of integrated open space and recreational resources and a
20 consideration of any existing regional open space plans.

21 2. A growth area element, specifically identifying those areas, if
22 any, that are particularly suitable for planned multimodal transportation and
23 infrastructure expansion and improvements designed to support a planned
24 concentration of a variety of uses, such as residential, office, commercial,
25 tourism and industrial uses. This element shall include policies and
26 implementation strategies that are designed to:

27 (a) Make automobile, transit and other multimodal circulation more
28 efficient, make infrastructure expansion more economical and provide for a
29 rational pattern of land development.

30 (b) Conserve significant natural resources and open space areas in
31 the growth area and coordinate their location to similar areas outside the
32 growth area's boundaries.

33 (c) Promote the public and private construction of timely and
34 financially sound infrastructure expansion through the use of infrastructure
35 funding and financing planning that is coordinated with development activity.

36 3. An environmental planning element that contains ~~analysis~~ ANALYSES,
37 policies and strategies to address anticipated effects, if any, of plan
38 elements on air quality, water quality and natural resources associated with
39 proposed development under the general plan. The policies and strategies to
40 be developed under this element shall be designed to have community-wide
41 applicability and shall not require the production of an additional
42 environmental impact statement or similar analysis beyond the requirements
43 of state and federal law.

44 4. A cost of development element that identifies policies and
45 strategies that the municipality will use to require development to pay its

1 fair share toward the cost of additional public service needs generated by
2 new development, with appropriate exceptions when in the public interest.
3 This element shall include:

4 (a) A component that identifies various mechanisms that are allowed
5 by law and that can be used to fund and finance additional public services
6 necessary to serve the development, including bonding, special taxing
7 districts, development fees, in lieu fees, facility construction, dedications
8 and service privatization.

9 (b) A component that identifies policies to ensure that any
10 mechanisms that are adopted by the municipality under this element result in
11 a beneficial use to the development, bear a reasonable relationship to the
12 burden imposed on the municipality to provide additional necessary public
13 services to the development and otherwise are imposed according to law.

14 5. A water resources element that addresses:

15 (a) The known legally and physically available surface water,
16 groundwater and effluent supplies.

17 (b) The demand for water that will result from future growth
18 projected in the general plan, added to existing uses.

19 (c) An analysis of how the demand for water that will result from
20 future growth projected in the general plan will be served by the water
21 supplies identified in subdivision (a) of this paragraph or a plan to obtain
22 additional necessary water supplies.

23 E. The general plan shall include for cities of fifty thousand
24 persons or more and may include for cities of less than fifty thousand
25 persons the following elements or any part or phase of the following
26 elements:

27 1. A conservation element for the conservation, development and
28 utilization of natural resources, including forests, soils, rivers and other
29 waters, harbors, fisheries, wildlife, minerals and other natural resources.
30 The conservation element may also cover:

31 (a) The reclamation of land.

32 (b) Flood control.

33 (c) Prevention and control of the pollution of streams and other
34 waters.

35 (d) Regulation of the use of land in stream channels and other areas
36 required for the accomplishment of the conservation plan.

37 (e) Prevention, control and correction of the erosion of soils,
38 beaches and shores.

39 (f) Protection of watersheds.

40 2. A recreation element showing a comprehensive system of areas and
41 public sites for recreation, including the following and, if practicable,
42 their locations and proposed development:

43 (a) Natural reservations.

44 (b) Parks.

45 (c) Parkways and scenic drives.

- 1 (d) Beaches.
- 2 (e) Playgrounds and playfields.
- 3 (f) Open space.
- 4 (g) Bicycle routes.
- 5 (h) Other recreation areas.

6 3. The circulation element provided for in subsection C, paragraph 2
7 of this section shall also include for cities of fifty thousand persons or
8 more and may include for cities of less than fifty thousand persons
9 recommendations concerning parking facilities, building setback requirements
10 and the delineations of such systems on the land, a system of street naming
11 and house and building numbering and other matters as may be related to the
12 improvement of circulation of traffic. The circulation element may also
13 include:

14 (a) A transportation element showing a comprehensive transportation
15 system, including locations of rights-of-way, terminals, viaducts and grade
16 separations. This element of the plan may also include port, harbor,
17 aviation and related facilities.

18 (b) A transit element showing a proposed system of rail or transit
19 lines or other mode of transportation as may be appropriate.

20 4. A public services and facilities element showing general plans for
21 police, fire, emergency services, sewage, refuse disposal, drainage, local
22 utilities, rights-of-way, easements and facilities for them.

23 5. A public buildings element showing locations of civic and
24 community centers, public schools, libraries, police and fire stations and
25 other public buildings.

26 6. A housing element consisting of standards and programs for the
27 elimination of substandard dwelling conditions, for the improvement of
28 housing quality, variety and affordability and for provision of adequate
29 sites for housing. This element shall contain an identification and analysis
30 of existing and forecasted housing needs. This element shall be designed to
31 make equal provision for the housing needs of all segments of the community
32 regardless of race, color, creed or economic level.

33 7. A conservation, rehabilitation and redevelopment element
34 consisting of plans and programs for:

35 (a) The elimination of slums and blighted areas.

36 (b) Community redevelopment, including housing sites, business and
37 industrial sites and public building sites.

38 (c) Neighborhood preservation and revitalization.

39 (d) Other purposes authorized by law.

40 8. A safety element for the protection of the community from natural
41 and artificial hazards including features necessary for such protection as
42 evacuation routes, peak load water supply requirements, minimum road widths
43 according to function, clearances around structures and geologic hazard
44 mapping in areas of known geologic hazards.

1 9. A bicycling element consisting of proposed bicycle facilities such
2 as bicycle routes, bicycle parking areas and designated bicycle street
3 crossing areas.

4 F. The water resources element of the general plan does not require:

5 1. New independent hydrogeologic studies.

6 2. The city or town to be a water service provider.

7 G. The policies and strategies to be developed under these elements
8 shall be designed to have community-wide applicability and this section does
9 not authorize the imposition of dedications, exactions, fees or other
10 requirements that are not otherwise authorized by law.

11 Sec. 2. Section 9-461.06, Arizona Revised Statutes, is amended to
12 read:

13 9-461.06. Adoption and amendment of general plan; expiration and
14 readoption

15 A. The general plan and any amendment to such plan shall be adopted
16 or readopted in the manner provided in this article.

17 B. The governing body shall:

18 1. Adopt written procedures to provide effective, early and
19 continuous public participation in the development and major amendment of
20 general plans from all geographic, ethnic and economic areas of the
21 municipality. The procedures shall provide for:

22 (a) The broad dissemination of proposals and alternatives.

23 (b) The opportunity for written comments.

24 (c) Public hearings after effective notice.

25 (d) Open discussions, communications programs and information
26 services.

27 (e) Consideration of public comments.

28 2. Consult with, advise and provide an opportunity for official
29 comment by public officials and agencies, the county, school districts,
30 associations of governments, public land management agencies, the military
31 airport if the municipality has territory in the vicinity of a military
32 airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, other
33 appropriate government jurisdictions, public utility companies, civic,
34 educational, professional and other organizations, property owners and
35 citizens generally to secure maximum coordination of plans and to indicate
36 properly located sites for all public purposes on the general plan.

37 C. At least sixty days before the general plan, ~~OR~~ an element or
38 major amendment of a general plan is noticed pursuant to subsection D of this
39 section, the planning agency shall transmit the proposal to the planning
40 commission, if any, and the governing body and SHALL submit a copy for review
41 and further comment to:

42 1. The planning agency of the county in which the municipality is
43 located.

44 2. Each county or municipality that is contiguous to the corporate
45 limits of the municipality or its area of extraterritorial jurisdiction.

1 3. The regional planning agency within which the municipality is
2 located.

3 4. The department of commerce or any other state agency that is
4 subsequently designated as the general planning agency for this state.

5 5. The department of water resources for review and comment on the
6 water resources element, if a water resources element is required.

7 6. If the general plan or ~~a portion~~, AN element or amendment of the
8 general plan is applicable to territory in the vicinity of a military airport
9 OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the military
10 airport.

11 7. Any person or entity that requests in writing to receive a review
12 copy of the proposal.

13 D. If the municipality has a planning commission, after considering
14 any recommendations from the review required under subsection C of this
15 section the planning commission shall hold at least one public hearing before
16 approving a general plan or any amendment to such plan. When the general
17 plan or any major amendment is being adopted, planning commissions in
18 municipalities having populations over twenty-five thousand persons shall
19 hold two or more public hearings at different locations within the
20 municipality to promote citizen participation. Notice of the time and place
21 of a hearing and availability of studies and summaries related to the hearing
22 shall be given at least fifteen and not more than thirty calendar days before
23 the hearing by:

24 1. Publication at least once in a newspaper of general circulation
25 published or circulated in the municipality, or if there is none, the notice
26 shall be posted in at least ten public places in the municipality.

27 2. Such other manner in addition to publication as the municipality
28 may deem necessary or desirable.

29 E. Action by the planning commission on the general plan or any
30 amendment to the plan shall be transmitted to the governing body of the
31 municipality.

32 F. Before adopting the general plan, or any amendment to it, the
33 governing body shall hold at least one public hearing. Notice of the time
34 and place of the hearing shall be given in the time and manner provided for
35 the giving of notice of the hearing by the planning commission as specified
36 in subsection D of this section.

37 G. The adoption or readoption of the general plan or any amendment to
38 such plan shall be by resolution of the governing body of the municipality,
39 after notice as provided for in subsection D of this section. The adoption
40 or readoption of or a major amendment to the general plan shall be approved
41 by affirmative vote of at least two-thirds of the members of the governing
42 body of the municipality. All major amendments to the general plan proposed
43 for adoption by the governing body of a municipality shall be presented at
44 a single public hearing during the calendar year the proposal is made. The
45 general plan, or any amendment to the plan, shall be endorsed in the manner

1 provided by the governing body to show that it has been adopted by the
2 governing body. If the motion to adopt or readopt a general plan or an
3 amendment to the general plan fails to pass, the governing body may
4 reconsider the motion in any manner allowed by the governing body's rules of
5 procedure, but any subsequent motion for the adoption or readoption of the
6 general plan or a major amendment to the general plan must be approved by an
7 affirmative vote of at least two-thirds of the members of the governing body.
8 For purposes of this subsection, "major amendment" means a substantial
9 alteration of the municipality's land use mixture or balance as established
10 in the municipality's existing general plan land use element. The
11 municipality's general plan shall define the criteria to determine if a
12 proposed amendment to the general plan effects a substantial alteration of
13 the municipality's land use mixture or balance as established in the
14 municipality's existing general plan land use element.

15 H. If the municipality does not have a planning commission, the only
16 procedural steps required for the adoption of the general plan, or any
17 amendment to such plan, shall be those provided in this article for action
18 by the governing body.

19 I. A copy of the adopted general plan of a municipality shall be sent
20 to the planning agency of the county within which the municipality is
21 located, and such plan or any portion of the plan may be adopted as a part
22 of the county general plan.

23 J. A general plan, with any amendments, is effective for up to ten
24 years from the date the plan was initially adopted and ratified pursuant to
25 subsection L of this section, or until the plan is readopted pursuant to this
26 subsection and ratified pursuant to subsection L of this section or a new
27 plan is adopted pursuant to this subsection and ratified pursuant to
28 subsection L of this section, and becomes effective. On or before the tenth
29 anniversary of the plan's most recent adoption, the governing body of the
30 municipality shall either readopt the existing plan for an additional term
31 of up to ten years or shall adopt a new general plan as provided by this
32 article.

33 K. Except for general plans that are required to be submitted to the
34 voters for ratification pursuant to subsection L of this section, the
35 adoption or readoption of a general plan, and any amendment to a general
36 plan, shall not be enacted as an emergency measure and is subject to
37 referendum as provided by article IV, part 1, section 1, subsection (8),
38 Constitution of Arizona, and title 19, chapter 1, article 4.

39 L. The governing body of a city or town having a population of more
40 than two thousand five hundred persons but less than ten thousand persons and
41 whose population growth rate exceeded an average of two per cent per year for
42 the ten year period before the most recent United States decennial census,
43 and any city or town having a population of ten thousand or more persons,
44 shall submit each new general plan adopted pursuant to subsection J of this
45 section to the voters for ratification at the next regularly scheduled

municipal election or at a special election scheduled at least one hundred twenty days after the governing body adopted the plan pursuant to section 16-204. The governing body shall include a general description of the plan and its elements in the municipal election pamphlet and shall provide public copies of the plan in at least two locations that are easily accessible to the public and may include posting on the municipality's official internet web site. If a majority of the qualified electors voting on the proposition approves the new plan, it shall become effective as provided by law. If a majority of the qualified electors voting on the proposition fails to approve the new plan, the current plan remains in effect until a new plan is approved by the voters pursuant to this subsection. The governing body shall either resubmit the proposed new plan, or revise the new plan as provided by this section, for subsequent submission to the voters at the next regularly scheduled municipal election or at a special election scheduled at least one hundred twenty days after the governing body readopted the new or revised new plan. All subsequent adoptions and submissions of the new plan or revised plans must comply with the procedures prescribed by this section until the plan is ratified.

M. In applying an open space element or a growth element of a general plan a municipality shall not designate private land or state trust land as open space, recreation, conservation or agriculture unless the municipality receives the written consent of the landowner or provides an alternative, economically viable designation in the general plan or zoning ordinance, allowing at least one residential dwelling per acre. If the landowner is the prevailing party in any action brought to enforce this subsection, a court shall award fees and other expenses to the landowner. A municipality may designate land as open space without complying with the requirements of this subsection if the land was zoned as open space and used as a golf course pursuant to a zoning ordinance adopted pursuant to article 6.1 of this chapter before May 1, 2000 and the designation does not impose additional conditions, limitations or restrictions on the golf course, unless the land is state trust land that was not planned and zoned as open space pursuant to title 37, chapter 2, article 5.1.

Sec. 3. Section 9-462.04, Arizona Revised Statutes, is amended to read:

9-462.04. Public hearing required

A. If the municipality has a planning commission or a hearing officer, the planning commission or hearing officer shall hold a public hearing on any zoning ordinance. Notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least fifteen days before the hearing in the following manner:

1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to

1 be legible from the public right-of-way and in at least ten public places in
2 the municipality. A posted notice shall be printed so that the following are
3 visible from a distance of one hundred feet: the word "zoning", the present
4 zoning district classification, the proposed zoning district classification
5 and the date and time of the hearing.

6 2. In proceedings involving rezoning of land which abuts other
7 municipalities or unincorporated areas of the county or a combination
8 thereof, copies of the notice of public hearing shall be transmitted to the
9 planning agency of such governmental unit abutting such land. In proceedings
10 involving rezoning of land that is located within the territory in the
11 vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in
12 section 28-8461, the municipality shall send copies of the notice of public
13 hearing by first class mail to the military airport. In addition to notice
14 by publication, a municipality may give notice of the hearing in such other
15 manner as it may deem necessary or desirable.

16 3. In proceedings that are not initiated by the property owner
17 involving rezoning of land which may change the zoning classification, notice
18 by first class mail shall be sent to each real property owner, as shown on
19 the last assessment of the property, of the area to be rezoned and all
20 property owners, as shown on the last assessment of the property, within
21 three hundred feet of the property to be rezoned.

22 4. In proceedings involving one or more of the following proposed
23 changes or related series of changes in the standards governing land uses,
24 notice shall be provided in the manner prescribed by paragraph 5:

25 (a) A ten per cent or more increase or decrease in the number of
26 square feet or units that may be developed.

27 (b) A ten per cent or more increase or reduction in the allowable
28 height of buildings.

29 (c) An increase or reduction in the allowable number of stories of
30 buildings.

31 (d) A ten per cent or more increase or decrease in setback or open
32 space requirements.

33 (e) An increase or reduction in permitted uses.

34 5. In proceedings governed by paragraph 4, the municipality shall
35 provide notice to real property owners pursuant to at least one of the
36 following notification procedures:

37 (a) Notice shall be sent by first class mail to each real property
38 owner, as shown on the last assessment, whose real property is directly
39 governed by the changes.

40 (b) If the municipality issues utility bills or other mass mailings
41 that periodically include notices or other informational or advertising
42 materials, the municipality shall include notice of such changes with such
43 utility bills or other mailings.

44 (c) The municipality shall publish such changes prior to the first
45 hearing on such changes in a newspaper of general circulation in the

1 municipality. The changes shall be published in a "display ad" covering not
2 less than one-eighth of a full page.

3 6. If notice is provided pursuant to paragraph 5, subdivision (b) or
4 (c), the municipality shall also send notice by first class mail to persons
5 who register their names and addresses with the municipality as being
6 interested in receiving such notice. The municipality may charge a fee not
7 to exceed five dollars per year for providing this service and may adopt
8 procedures to implement this paragraph.

9 7. Notwithstanding the notice requirements set forth in paragraph 4,
10 the failure of any person or entity to receive notice shall not constitute
11 grounds for any court to invalidate the actions of a municipality for which
12 the notice was given.

13 B. If the matter to be considered applies to territory in a high
14 noise or accident potential zone as defined in section 28-8461, the notice
15 prescribed in subsection A of this section shall include a general statement
16 that the matter applies to property located in the high noise or accident
17 potential zone.

18 C. After the hearing, the planning commission or hearing officer
19 shall render a decision in the form of a written recommendation to the
20 governing body. The recommendation shall include the reasons for the
21 recommendation and be transmitted to the governing body in such form and
22 manner as may be specified by the governing body.

23 D. If the planning commission or hearing officer has held a public
24 hearing, the governing body may adopt the recommendations of the planning
25 commission or hearing officer without holding a second public hearing if
26 there is no objection, request for public hearing or other protest. The
27 governing body shall hold a public hearing if requested by the party
28 aggrieved or any member of the public or of the governing body, or, in any
29 case, if no public hearing has been held by the planning commission or
30 hearing officer. In municipalities with territory in the vicinity of a
31 military airport OR ANCILLARY MILITARY FACILITY as defined in section
32 28-8461, the governing body shall hold a public hearing if, after notice is
33 transmitted to the military airport pursuant to subsection A of this section
34 and before the public hearing, the military airport provides comments or
35 analysis concerning the compatibility of the proposed rezoning with the high
36 noise or accident potential generated by military airport OR ANCILLARY
37 MILITARY FACILITY operations that may have an adverse impact on public health
38 and safety, and the governing body shall consider and analyze the comments
39 or analysis before making a final determination. Notice of the time and
40 place of the hearing shall be given in the time and manner provided for the
41 giving of notice of the hearing by the planning commission as specified in
42 subsection A of this section. In addition a municipality may give notice of
43 the hearing in such other manner as it may deem necessary or desirable.

44 E. A municipality may enact an ordinance authorizing county zoning to
45 continue in effect until municipal zoning is applied to land previously zoned

1 by the county and annexed by the municipality, but in no event for longer
2 than six months after the annexation.

3 F. A municipality is not required to adopt a general plan prior to
4 the adoption of a zoning ordinance.

5 G. If there is no planning commission or hearing officer, the
6 governing body of the municipality shall perform the functions assigned to
7 the planning commission or hearing officer.

8 H. If the owners of twenty per cent or more either of the area of the
9 lots included in a proposed change, or of those immediately adjacent in the
10 rear or any side thereof extending one hundred fifty feet therefrom, or of
11 those directly opposite thereto extending one hundred fifty feet from the
12 street frontage of the opposite lots, file a protest in writing against a
13 proposed amendment, it shall not become effective except by the favorable
14 vote of three-fourths of all members of the governing body of the
15 municipality. If any members of the governing body are unable to vote on
16 such a question because of a conflict of interest, then the required number
17 of votes for passage of the question shall be three-fourths of the remaining
18 membership of the governing body, provided that such required number of votes
19 shall in no event be less than a majority of the full membership of the
20 legally established governing body.

21 I. In applying an open space element or a growth element of a general
22 plan, a parcel of land shall not be rezoned for open space, recreation,
23 conservation or agriculture unless the owner of the land consents to the
24 rezoning in writing.

25 J. Notwithstanding the provisions of section 19-142, subsection B, a
26 decision by the governing body involving rezoning of land which is not owned
27 by the municipality and which changes the zoning classification of such land
28 may not be enacted as an emergency measure and such change shall not be
29 effective for at least thirty days after final approval of the change in
30 classification by the governing body.

31 Sec. 4. Section 11-806, Arizona Revised Statutes, is amended to read:

32 11-806. Powers and duties; comprehensive plan

33 A. The commission shall act in an advisory capacity to the board and
34 may from time to time, and shall, when requested by the board, make a report
35 or recommendation in connection with any matter relating to the development
36 of the county under the jurisdiction of the board. The commission shall make
37 such investigations, maps, reports and recommendations in connection
38 therewith as seem desirable within the limits of the funds available.

39 B. The commission shall prepare and recommend to the board a
40 comprehensive plan of the area of jurisdiction of the county in the manner
41 prescribed by article 2 of this chapter. The purpose of the plan is to bring
42 about coordinated physical development in accordance with the present and
43 future needs of the county. The comprehensive plan shall be developed so as
44 to conserve the natural resources of the county, to insure ENSURE efficient
45 expenditure of public funds, and to promote the health, safety, convenience,

1 and general welfare of the public. Such comprehensive plan may include but
2 not be limited to, among other things, studies and recommendations relative
3 to the location, character and extent of highways, railroads, bus and other
4 transportation routes, bicycle facilities, bridges, public buildings, public
5 services, schools, parks, open space, housing quality, variety and
6 affordability, parkways, hiking and riding trails, airports, forests,
7 wildlife areas, dams, projects affecting conservation of natural resources,
8 air quality, water quality and floodplain zoning. For counties with
9 territory in the vicinity of a military airport OR ANCILLARY MILITARY
10 FACILITY as defined in section 28-8461, the commission shall also consider
11 military airport OR ANCILLARY MILITARY FACILITY operations. Such
12 comprehensive plan shall be a public record, but its purpose and effect shall
13 be primarily as an aid to the county planning and zoning commission in the
14 performance of its duties.

15 C. After considering any recommendations from the review required
16 under subsection H of this section, the planning commission shall hold at
17 least one public hearing. Notice of the time and place of a hearing and
18 availability of studies and summaries related to the hearing shall be given
19 at least fifteen and not more than thirty calendar days before the hearing
20 by:

21 1. Publication at least once in a newspaper of general circulation in
22 the county.

23 2. Such other manner in addition to publication as the county may
24 deem necessary or desirable.

25 D. The board shall adopt a comprehensive plan and subsequently amend
26 or extend the adopted plan as provided by article 2 of this chapter. Before
27 the adoption, amendment or extension of the plan, the board shall hold at
28 least one public hearing on the plan.

29 E. The board of supervisors shall:

30 1. Adopt written procedures to provide effective, early and
31 continuous public participation in the development and major amendment of
32 comprehensive plans from all geographic, ethnic and economic areas of the
33 county. The procedures shall provide for:

34 (a) The broad dissemination of proposals and alternatives.

35 (b) The opportunity for written comments.

36 (c) Public hearings after effective notice.

37 (d) Open discussions, communications programs and information
38 services.

39 (e) Consideration of public comments.

40 2. Consult with, advise and provide an opportunity for official
41 comment by public officials and agencies, municipalities, school districts,
42 associations of governments, public land management agencies, the military
43 airport if the ~~county has~~ COUNTY'S AREA OF JURISDICTION INCLUDES territory
44 in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as
45 defined in section 28-8461, other appropriate government jurisdictions,

1 public utility companies, civic, educational, professional and other
2 organizations, property owners and citizens generally to secure the maximum
3 coordination of plans and to indicate properly located sites for all public
4 purposes on the plan.

5 3. In counties having a population of less than four hundred thousand
6 persons, receive petitions to form a rural planning area that are signed by
7 persons who own real property in any specific portion of the county outside
8 the corporate boundaries of any cities and towns. The petitions must be
9 signed by owners of a majority of the acres of real property in the proposed
10 planning area. Participation in the rural planning area is voluntary, and
11 any person may withdraw real property owned by the person from the planning
12 area. The board of supervisors shall encourage voluntary participation in
13 the planning area and shall aid the planning areas in providing a sound
14 factual and policy basis for planning. The recommendations of rural planning
15 areas shall emphasize voluntary, nonregulatory incentives for compliance and
16 accommodation of continuing traditional rural and agricultural
17 enterprises. Rural planning areas shall transmit their recommendations to
18 the board of supervisors for its consideration for inclusion in the county
19 comprehensive plan.

20 F. In any county having a population of less than four hundred
21 thousand persons, any cities and towns and the county sharing a
22 multijurisdictional area with a combined population of more than fifty
23 thousand but less than one hundred thousand persons, according to the most
24 recent department of economic security estimates, may voluntarily form rural
25 planning zones to develop coordinated and comprehensive regional plans.

26 G. The commission shall confer with the state land department and the
27 governing bodies and planning commissions of cities and towns in the county
28 for the purpose of guiding and accomplishing a coordinated, adjusted and
29 harmonious development of the county, of zoning districts, of urban growth
30 and of public improvements and utilities which do not begin and terminate
31 within the boundaries of any single city or town and which will, in
32 accordance with the present and future needs of the county, best promote with
33 efficiency and economy the health, safety, morals, order, convenience or
34 general welfare of the public.

35 H. At least sixty days before the comprehensive plan, OR an element
36 or major amendment of a comprehensive plan is noticed pursuant to subsection
37 C of this section, the commission shall transmit the proposal to the board
38 of supervisors and submit a copy for review and further comment to:

- 39 1. Each municipality in the county.
- 40 2. Each other county that is contiguous to the county.
- 41 3. The regional planning agency in the county.
- 42 4. The department of commerce or any other state agency that is
43 subsequently designated as the general planning agency for this state.
- 44 5. The department of water resources for review and comment on the
45 water resources element, if a water resources element is required.

1 6. If the comprehensive plan or a ~~portion~~, AN element or amendment of
2 the comprehensive plan is applicable to territory in the vicinity of a
3 military airport OR ANCILLARY MILITARY FACILITY as defined in section
4 28-8461, the military airport.

5 7. Any person or entity that requests in writing to receive a review
6 copy of the proposal.

7 Sec. 5. Section 11-829, Arizona Revised Statutes, is amended to read:
8 11-829. Amendment of ordinance or change of zoning district

9 boundaries; definition

10 A. A property owner or authorized agent of a property owner desiring
11 an amendment or change in the zoning ordinance changing the zoning district
12 boundaries within an area previously zoned shall file an application for the
13 amendment or change. All zoning and rezoning ordinances, regulations or
14 specific plans adopted under this article shall be consistent with and
15 conform to the adopted county plan. In the case of uncertainty in
16 constructing or applying the conformity of any part of a proposed rezoning
17 ordinance to the adopted county plan, the ordinance shall be construed in a
18 manner that will further the implementation of, and not be contrary to, the
19 goals, policies and applicable elements of the county plan. A rezoning
20 ordinance conforms with the county plan if it proposes land uses, densities
21 or intensities within the range of identified uses, densities and intensities
22 of the county plan.

23 B. The board of supervisors shall adopt by ordinance a citizen review
24 process that applies to all rezoning and specific plan applications that
25 require a public hearing. The citizen review process shall include at least
26 the following requirements:

27 1. Adjacent landowners and other potentially affected citizens will
28 be notified of the application.

29 2. The county will inform adjacent landowners and other potentially
30 affected citizens of the substance of the proposed rezoning.

31 3. Adjacent landowners and other potentially affected citizens will
32 be provided an opportunity to express any issues or concerns that they may
33 have with the proposed rezoning before the public hearing.

34 C. Upon receipt of the application the board shall submit it to the
35 commission for a report. Prior to reporting to the board, the commission
36 shall hold at least one public hearing thereon after giving at least fifteen
37 days' notice thereof by one publication in a newspaper of general circulation
38 in the county seat and by posting of the area included in the proposed
39 change. If the matter to be considered applies to territory in a high noise
40 or accident potential zone as defined in section 28-8461, the notice shall
41 include a general statement that the matter applies to property located in
42 the high noise or accident potential zone. In case of a rezoning, the
43 posting shall be in no less than two places with at least one notice for each
44 quarter mile of frontage along perimeter public rights-of-way so that the
45 notices are visible from the nearest public right-of-way. The commission

1 shall also send notice by first class mail to each real property owner as
2 shown on the last assessment of the property within three hundred feet of the
3 proposed amendment or change and each county and municipality which is
4 contiguous to the area of the amendment or change. In proceedings involving
5 rezoning of land that is located within territory in the vicinity of a
6 military airport OR ANCILLARY MILITARY FACILITY as defined in section
7 28-8461, the commission shall send copies of the notice of public hearing by
8 first class mail to the military airport. The notice sent by mail shall
9 include, at a minimum, the date, time and place of the hearing on the
10 proposed amendment or change including a general explanation of the matter
11 to be considered, a general description of the area of the proposed amendment
12 or change, how the real property owners within the zoning area may file
13 approvals or protests of the proposed rezoning, and notification that if
14 twenty per cent of the property owners by area and number within the zoning
15 area file protests, an affirmative vote of three-fourths of all members of
16 the board will be required to approve the rezoning. The following specific
17 notice provisions also apply:

18 1. In proceedings that are initiated by the commission involving
19 rezoning, notice by first class mail shall be sent to each real property
20 owner, as shown on the last assessment of the property, of the area to be
21 rezoned and all property owners, as shown on the last assessment of the
22 property, within three hundred feet of the property to be rezoned.

23 2. In proceedings involving one or more of the following proposed
24 changes or related series of changes in the standards governing land uses,
25 notice shall be provided in the manner prescribed by paragraph 3 of this
26 subsection:

27 (a) A ten per cent or more increase or decrease in the number of
28 square feet or units that may be developed.

29 (b) A ten per cent or more increase or reduction in the allowable
30 height of buildings.

31 (c) An increase or reduction in the allowable number of stories of
32 buildings.

33 (d) A ten per cent or more increase or decrease in setback or open
34 space requirements.

35 (e) An increase or reduction in permitted uses.

36 3. In proceedings governed by paragraph 2 of this subsection, the
37 county shall provide notice to real property owners pursuant to at least one
38 of the following notification procedures:

39 (a) Notice shall be sent by first class mail to each real property
40 owner, as shown on the last assessment, whose real property is directly
41 affected by the changes.

42 (b) If the county issues utility bills or other mass mailings that
43 periodically include notices or other informational or advertising materials,
44 the county shall include notice of such changes with such utility bills or
45 other mailings.

1 (c) The county shall publish such changes prior to the first hearing
2 on such changes in a newspaper of general circulation in the county. The
3 changes shall be published in a display advertisement covering not less than
4 one-eighth of a full page.

5 4. If notice is provided pursuant to paragraph 3, subdivision (b) or
6 (c) of this subsection, the county shall also send notice by first class mail
7 to persons who register their names and addresses with the county as being
8 interested in receiving such notice. The county may charge a fee not to
9 exceed five dollars per year for providing this service and may adopt
10 procedures to implement this paragraph.

11 5. Notwithstanding the notice requirements set forth in paragraph 2
12 of this subsection, the failure of any person or entity to receive notice
13 shall not constitute grounds for any court to invalidate the actions of a
14 county for which the notice was given.

15 D. If the planning commission or hearing officer has held a public
16 hearing, the board may adopt the recommendations of the planning commission
17 or hearing officer through use of a consent calendar without holding a second
18 public hearing if there is no objection, request for public hearing or other
19 protest. If there is an objection, a request for public hearing or a
20 protest, the board shall hold a public hearing thereon at least fifteen days'
21 notice of which shall be given by one publication in a newspaper of general
22 circulation in the county seat and by posting the area included in the
23 proposed change. In counties with territory in the vicinity of a military
24 airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the
25 board shall hold a public hearing if, after notice is mailed to the military
26 airport pursuant to subsection C of this section and before the public
27 hearing, the military airport provides comments or analysis concerning the
28 compatibility of the proposed rezoning with the high noise or accident
29 potential generated by military airport OR ANCILLARY MILITARY FACILITY
30 operations that may have an adverse impact on public health and safety, and
31 the board shall consider and analyze the comments or analysis before making
32 a final determination. After holding the hearing the board may adopt the
33 amendment, but if twenty per cent of the owners of property by area and
34 number within the zoning area file a protest to the proposed change, the
35 change shall not be made except by a three-fourths vote of all members of the
36 board. If any members of the board are unable to vote on the question
37 because of a conflict of interest, the required number of votes for the
38 passage of the question is three-fourths of the remaining membership of the
39 board, except that the required number of votes in no event shall be less
40 than a majority of the full membership of the board. In calculating the
41 owners by area, only that portion of a lot or parcel of record situated
42 within three hundred feet of the property to be rezoned shall be
43 included. In calculating the owners by number or area, county property and
44 public rights-of-way shall not be included.

1 E. The planning commission may on its own motion propose an amendment
2 to the zoning ordinance and may, after holding a public hearing as required
3 by this chapter, transmit the proposal to the board which shall thereupon
4 proceed as set forth in this chapter for any other amendment.

5 F. Notwithstanding the provisions of title 19, chapter 1, article 4,
6 a decision by the governing body involving rezoning of land which is not
7 owned by the county and which changes the zoning classification of such land
8 or which changes the zoning standards of such land as set forth in subsection
9 C, paragraph 2 of this section may not be enacted as an emergency measure and
10 such a change shall not be effective for at least thirty days after final
11 approval of the change in classification by the board. Unless a resident
12 files a written objection with the board of supervisors, the rezoning may be
13 enacted as an emergency measure that becomes effective immediately by a
14 four-fifths majority vote of the board for those counties with five or more
15 supervisors or a two-thirds majority vote of the board for those counties
16 with less than five supervisors.

17 G. The legislature finds that a rezoning of land that changes the
18 zoning classification of the land or that restricts the use or reduces the
19 value of the land is a matter of statewide concern. Such a change in zoning
20 that is initiated by the governing body or zoning body shall not be made
21 without the express written consent of the property owner. In applying an
22 open space element or a growth element of a county plan, a parcel of land
23 shall not be rezoned for open space, recreation, conservation or agriculture
24 unless the owner of the land consents to the rezoning in writing. For the
25 purposes of this subsection, rezoning does not include the creation or
26 expansion of overlay zones solely for the purpose of implementing airport
27 safety and protection. Rezoning also does not include the redesignation of
28 areas of the county to which the residential provisions of the county
29 building codes or the state plumbing code apply or do not apply. The county
30 shall not adopt any change in a zoning classification to circumvent the
31 purpose of this subsection.

32 H. For the purposes of this section, "zoning area" means the area
33 within three hundred feet of the proposed amendment or change.

34 Sec. 6. Section 15-2002, Arizona Revised Statutes, as amended by Laws
35 2003, chapter 215, section 3, is amended to read:

36 15-2002. Powers and duties; executive director; staffing;
37 report

38 A. The school facilities board shall:

39 1. Make assessments of school facilities and equipment deficiencies
40 pursuant to section 15-2021 and approve the distribution of grants as
41 appropriate.

42 2. Develop a database for administering the building renewal formula
43 prescribed in section 15-2031 and administer the distribution of monies to
44 school districts for building renewal.

1 3. Inspect school buildings at least once every five years to ensure
2 compliance with the building adequacy standards prescribed in section 15-2011
3 and routine preventative maintenance guidelines as prescribed in this section
4 with respect to construction of new buildings and maintenance of existing
5 buildings. The school facilities board shall randomly select twenty school
6 districts every thirty months and inspect them pursuant to this paragraph.

7 4. Review and approve student population projections submitted by
8 school districts to determine to what extent school districts are entitled
9 to monies to construct new facilities pursuant to section 15-2041. The board
10 shall make a final determination within six months of the receipt of an
11 application by a school district for monies from the new school facilities
12 fund.

13 5. Certify that plans for new school facilities meet the building
14 adequacy standards prescribed in section 15-2011.

15 6. Develop prototypical elementary and high school designs. The board
16 shall review the design differences between the schools with the highest
17 academic productivity scores and the schools with the lowest academic
18 productivity scores. The board shall also review the results of a valid and
19 reliable survey of parent quality rating in the highest performing schools
20 and the lowest performing schools in this state. The survey of parent
21 quality rating shall be administered by the department of education. The
22 board shall consider the design elements of the schools with the highest
23 academic productivity scores and parent quality ratings in the development
24 of elementary and high school designs. The board shall develop separate
25 school designs for elementary, middle and high schools with varying pupil
26 capacities.

27 7. Develop application forms, reporting forms and procedures to carry
28 out the requirements of this article.

29 8. Review and approve or reject requests submitted by school districts
30 to take actions pursuant to section 15-341, subsection F.

31 9. Submit an annual report by December 15 to the speaker of the house
32 of representatives, the president of the senate, the superintendent of public
33 instruction, the director of the Arizona state library, archives and public
34 records and the governor that includes the following information:

35 (a) A detailed description of the amount of monies distributed by the
36 school facilities board in the previous fiscal year.

37 (b) A list of each capital project that received monies from the
38 school facilities board during the previous fiscal year, a brief description
39 of each project that was funded and a summary of the board's reasons for the
40 distribution of monies for the project.

41 (c) A summary of the findings and conclusions of the building
42 maintenance inspections conducted pursuant to this article during the
43 previous fiscal year.

44 (d) A summary of the findings of common design elements and
45 characteristics of the highest performing schools and the lowest performing

1 schools based on academic productivity including the results of the parent
2 quality rating survey.

3 For the purposes of this paragraph, "academic productivity" means academic
4 year advancement per calendar year as measured with student-level data using
5 the statewide nationally standardized norm-referenced achievement test.

6 10. By December 1 of each ~~even-numbered~~ year, report to the joint
7 committee on capital review the ~~estimated~~ amounts necessary to fulfill the
8 requirements of sections 15-2021, 15-2022, 15-2031 and 15-2041 for the
9 following ~~two~~ fiscal years YEAR. ~~By December 1 of each odd-numbered year,~~
10 ~~the board shall provide to the joint committee on capital review an update~~
11 ~~of~~ AND the estimated amounts necessary to fulfill the requirements of
12 sections 15-2021, 15-2022, 15-2031 and 15-2041 for the following fiscal year
13 FOLLOWING THE NEXT FISCAL YEAR. No later than January 1 of each year, the
14 board shall instruct the state treasurer as to the amounts under the
15 transaction privilege tax to be credited in equal quarterly installments for
16 the following state fiscal year. The board shall provide copies of both
17 reports to the president of the senate, the speaker of the house of
18 representatives and the governor.

19 11. Adopt minimum school facility adequacy guidelines to provide the
20 minimum quality and quantity of school buildings and the facilities and
21 equipment necessary and appropriate to enable pupils to achieve the
22 educational goals of the Arizona state schools for the deaf and the
23 blind. The school facilities board shall establish minimum school facility
24 adequacy guidelines applicable to the Arizona state schools for the deaf and
25 the blind by December 31, 2000.

26 12. Beginning August 15, 2004, and each even-numbered year thereafter,
27 report to the joint committee on capital review the amounts necessary to
28 fulfill the requirements of sections 15-2031 and 15-2041 for the Arizona
29 state schools for the deaf and the blind for the following two fiscal
30 years. Notwithstanding paragraph 10 of this subsection or any other law, the
31 school facilities board shall not include these amounts in the building
32 renewal or new school facilities transfer instructions to the state
33 treasurer. The Arizona state schools for the deaf and the blind shall
34 incorporate the findings of the report in any request for building renewal
35 monies and new school facilities monies. Any monies provided to the Arizona
36 state schools for the deaf and the blind for building renewal and for new
37 school facilities are subject to legislative appropriation.

38 13. By October 15 of each year, the school facilities board shall
39 submit information regarding demographic assumptions, a proposed construction
40 schedule and new school construction cost estimates for the following fiscal
41 year to the joint committee on capital review for its review.

42 B. The school facilities board may contract for private services in
43 compliance with the procurement practices prescribed in title 41, chapter 23.

1 C. The governor shall appoint an executive director of the school
2 facilities board pursuant to section 38-211. The executive director is
3 eligible to receive compensation as determined pursuant to section 38-611 and
4 may hire and fire necessary staff as approved by the legislature in the
5 budget. The executive director shall have demonstrated competency in school
6 finance, facilities design or facilities management, either in private
7 business or government service. The executive director serves at the
8 pleasure of the governor. The staff of the school facilities board is exempt
9 from title 41, chapter 4, articles 5 and 6. The executive director:

10 1. Shall analyze applications for monies submitted to the board by
11 school districts.

12 2. Shall assist the board in developing forms and procedures for the
13 distribution and review of applications and the distribution of monies to
14 school districts.

15 3. May review or audit, or both, the expenditure of monies by a school
16 district for deficiencies corrections, building renewal and new school
17 facilities.

18 4. Shall assist the board in the preparation of the board's annual
19 report.

20 5. Shall research and provide reports on issues of general interest
21 to the board.

22 6. May aid school districts in the development of reasonable and
23 cost-effective school designs in order to avoid statewide duplicated efforts
24 and unwarranted expenditures in the area of school design.

25 7. May assist school districts in facilitating the development of
26 multijurisdictional facilities.

27 8. Shall assist the board in any other appropriate matter or method
28 as directed by the members of the board.

29 9. Shall establish procedures to ensure compliance with the notice and
30 hearing requirements prescribed in section 15-905. The notice and hearing
31 procedures adopted by the board shall include the requirement, with respect
32 to the board's consideration of any application filed after July 1, 2001 OR
33 AFTER DECEMBER 31 OF THE YEAR IN WHICH THE PROPERTY BECOMES TERRITORY IN THE
34 VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY AS DEFINED IN
35 SECTION 28-8461 for monies to fund the construction of new school facilities
36 proposed to be located in territory in the vicinity of a military airport OR
37 ANCILLARY MILITARY FACILITY ~~as defined in section 28-8461~~, that the military
38 airport receive notification of the application by first class mail at least
39 thirty days before any hearing concerning the application.

40 10. May expedite any request for funds in which the local match was not
41 obtained for a project that received preliminary approval by the state board
42 for school capital facilities.

43 11. Shall expedite any request for funds in which the school district
44 governing board submits an application that shows an immediate need for a new
45 school facility.

1 12. Shall make a determination as to administrative completion within
2 one month after the receipt of an application by a school district for monies
3 from the new school facilities fund.

4 13. Shall provide technical support to school districts as requested
5 by school districts in connection with the construction of new school
6 facilities and the maintenance of existing school facilities.

7 D. When appropriate, the school facilities board shall review and use
8 the statewide school facilities inventory and needs assessment conducted by
9 the joint committee on capital review and issued in July, 1995.

10 E. The school facilities board shall contract with one or more private
11 building inspectors to complete an initial assessment of school facilities
12 and equipment provided in section 15-2021 and shall inspect each school
13 building in this state at least once every five years to ensure compliance
14 with section 15-2011. A copy of the inspection report, together with any
15 recommendations for building maintenance, shall be provided to the school
16 facilities board and the governing board of the school district.

17 F. The school facilities board may consider appropriate combinations
18 of facilities or uses in making assessments of and curing deficiencies
19 pursuant to subsection A, paragraph 1 of this section and in certifying plans
20 for new school facilities pursuant to subsection A, paragraph 5 of this
21 section.

22 G. The board shall not award any monies to fund new facilities that
23 are financed by class A bonds that are issued by the school district.

24 H. The board shall not distribute monies to a school district for
25 replacement or repair of facilities if the costs associated with the
26 replacement or repair are covered by insurance or a performance or payment
27 bond.

28 I. The board may contract for construction services and materials that
29 are necessary to correct existing deficiencies in school district facilities
30 as determined pursuant to section 15-2021. The board may procure the
31 construction services necessary pursuant to this subsection by any method
32 including construction-manager-at-risk, design-build, design-bid-build or
33 job-order-contracting as provided by title 41, chapter 23. The construction
34 planning and services performed pursuant to this subsection are exempt from
35 section 41-791.01.

36 J. The school facilities board may enter into agreements with school
37 districts to allow school facilities board staff and contractors access to
38 school property for the purposes of performing the construction services
39 necessary pursuant to subsection I of this section.

40 K. By October 1, 2002, each school district shall develop routine
41 preventative maintenance guidelines for its facilities. The guidelines shall
42 be submitted to the school facilities board for review and approval by
43 February 1, 2003. If upon inspection by the school facilities board it is
44 determined that a school district facility was inadequately maintained
45 pursuant to the school district's routine preventative maintenance

1 guidelines, the school district shall use building renewal monies pursuant
2 to section 15-2031, subsection J to return the building to compliance with
3 the school district's routine preventative maintenance guidelines. Once the
4 district is in compliance, it no longer is required to use building renewal
5 monies for preventative maintenance.

6 L. The school facilities board may temporarily transfer monies between
7 the capital reserve fund established by section 15-2003, the deficiencies
8 correction fund established by section 15-2021, the emergency deficiencies
9 correction fund established by section 15-2022, the building renewal fund
10 established by section 15-2031 and the new school facilities fund established
11 by section 15-2041 if all of the following conditions are met:

12 1. The transfer is necessary to avoid a temporary shortfall in the
13 fund into which the monies are transferred.

14 2. The transferred monies are restored to the fund where the monies
15 originated as soon as practicable after the temporary shortfall in the other
16 fund has been addressed.

17 3. The school facilities board reports to the joint committee on
18 capital review the amount of and the reason for any monies transferred.

19 Sec. 7. Repeal

20 Section 15-2002, Arizona Revised Statutes, as amended by Laws 2003,
21 chapter 264, section 9, is repealed.

22 Sec. 8. Section 15-2041, Arizona Revised Statutes, is amended to read:

23 15-2041. New school facilities fund; capital plan

24 A. A new school facilities fund is established consisting of monies
25 appropriated by the legislature and monies credited to the fund pursuant to
26 section 37-221 or 42-5030.01. The school facilities board shall administer
27 the fund and distribute monies, as a continuing appropriation, to school
28 districts for the purpose of constructing new school facilities. On June 30
29 of each fiscal year, any unobligated contract monies in the new school
30 facilities fund shall be transferred to the capital reserve fund established
31 by section 15-2003.

32 B. The school facilities board shall prescribe a uniform format for
33 use by the school district governing board in developing and annually
34 updating a capital plan that consists of each of the following:

35 1. Enrollment projections for the next five years for elementary
36 schools and eight years for middle and high schools, including a description
37 of the methods used to make the projections.

38 2. A description of new schools or additions to existing schools
39 needed to meet the building adequacy standards prescribed in section 15-2011.
40 The description shall include:

41 (a) The grade levels and the total number of pupils that the school
42 or addition is intended to serve.

43 (b) The year in which it is necessary for the school or addition to
44 begin operations.

1 (c) A timeline that shows the planning and construction process for
2 the school or addition.

3 3. Long-term projections of the need for land for new schools.

4 4. Any other necessary information required by the school facilities
5 board to evaluate a school district's capital plan.

6 5. If a school district pays tuition for all or a portion of the
7 school district's high school pupils to another school district, the capital
8 plan shall indicate the number of pupils for which the district pays tuition
9 to another district. If a school district accepts pupils from another school
10 district pursuant to section 15-824, subsection A, the school district shall
11 indicate the projections for this population separately. This paragraph does
12 not apply to a small isolated school district as defined in section 15-901.

13 C. If the capital plan indicates a need for a new school or an
14 addition to an existing school within the next four years or a need for land
15 within the next ten years, the school district shall submit its plan to the
16 school facilities board by September 1 and shall request monies from the new
17 school facilities fund for the new construction or land. Monies provided for
18 land shall be in addition to any monies provided pursuant to subsection D of
19 this section.

20 D. The school facilities board shall distribute monies from the new
21 school facilities fund as follows:

22 1. The school facilities board shall review and evaluate the
23 enrollment projections and either approve the projections as submitted or
24 revise the projections. In determining new construction requirements, the
25 school facilities board shall determine the net new growth of pupils that
26 will require additional square footage that exceeds the building adequacy
27 standards prescribed in section 15-2011. If the projected growth and the
28 existing number of pupils exceeds three hundred fifty pupils who are served
29 in a school district other than the pupil's resident school district, the
30 school facilities board, the receiving school district and the resident
31 school district shall develop a capital facilities plan on how to best serve
32 those pupils. A small isolated school district as defined in section 15-901
33 is not required to develop a capital facilities plan pursuant to this
34 paragraph.

35 2. If the approved projections indicate that additional space will not
36 be needed within the next two years for elementary schools or three years for
37 middle or high schools in order to meet the building adequacy standards
38 prescribed in section 15-2011, the request shall be held for consideration
39 by the school facilities board for possible future funding and the school
40 district shall annually submit an updated plan until the additional space is
41 needed.

42 3. If the approved projections indicate that additional space will be
43 needed within the next two years for elementary schools or three years for
44 middle or high schools in order to meet the building adequacy standards

1 prescribed in section 15-2011, the school facilities board shall provide an
2 amount as follows:

3 (a) Determine the number of pupils requiring additional square footage
4 to meet building adequacy standards. This amount for elementary schools
5 shall not be less than the number of new pupils for whom space will be needed
6 in the next year and shall not exceed the number of new pupils for whom space
7 will be needed in the next five years. This amount for middle and high
8 schools shall not be less than the number of new pupils for whom space will
9 be needed in the next four years and shall not exceed the number of new
10 pupils for whom space will be needed in the next eight years.

11 (b) Multiply the number of pupils determined in subdivision (a) of
12 this paragraph by the square footage per pupil. The square footage per pupil
13 is ninety square feet per pupil for preschool children with disabilities,
14 kindergarten programs and grades one through six, one hundred square feet for
15 grades seven and eight, one hundred thirty-four square feet for a school
16 district that provides instruction in grades nine through twelve for fewer
17 than one thousand eight hundred pupils and one hundred twenty-five square
18 feet for a school district that provides instruction in grades nine through
19 twelve for at least one thousand eight hundred pupils. The total number of
20 pupils in grades nine through twelve in the district shall determine the
21 square footage factor to use for net new pupils. The school facilities board
22 may modify the square footage requirements prescribed in this subdivision for
23 particular schools based on any of the following factors:

24 (i) The number of pupils served or projected to be served by the
25 school district.

26 (ii) Geographic factors.

27 (iii) Grade configurations other than those prescribed in this
28 subdivision.

29 (iv) Compliance with minimum school facility adequacy requirements
30 established pursuant to section 15-2011.

31 (c) Multiply the product obtained in subdivision (b) of this paragraph
32 by the cost per square foot. The cost per square foot is ninety dollars for
33 preschool children with disabilities, kindergarten programs and grades one
34 through six, ninety-five dollars for grades seven and eight and one hundred
35 ten dollars for grades nine through twelve. The cost per square foot shall
36 be adjusted annually for construction market considerations based on an index
37 identified or developed by the joint legislative budget committee as
38 necessary but not less than once each year. The school facilities board
39 shall multiply the cost per square foot by 1.05 for any school district
40 located in a rural area. The school facilities board may modify the base
41 cost per square foot prescribed in this subdivision for particular schools
42 based on geographic conditions or site conditions. For THE purposes of this
43 subdivision, "rural area" means an area outside a thirty-five mile radius of
44 a boundary of a municipality with a population of more than fifty thousand
45 persons according to the most recent United States decennial census.

1 (d) Once the school district governing board obtains approval from the
2 school facilities board for new facility construction funds, additional
3 portable or modular square footage created for the express purpose of
4 providing temporary space for pupils until the completion of the new facility
5 shall not be included by the school facilities board for the purpose of new
6 construction funding calculations. On completion of the new facility
7 construction project, if the portable or modular facilities continue in use,
8 then the portable or modular facilities shall be included as prescribed by
9 this chapter, unless the school facilities board approves their continued use
10 for the purpose of providing temporary space for pupils until the completion
11 of the next new facility that has been approved for funding from the new
12 school facilities fund.

13 4. For projects approved after December 31, 2001, and notwithstanding
14 paragraph 3 of this subsection, a unified school district that does not have
15 a high school is not eligible to receive high school space as prescribed by
16 section 15-2011 and this section unless the unified district qualifies for
17 geographic factors prescribed by paragraph 3, subdivision (b), item (ii) of
18 this subsection.

19 E. Monies for architectural and engineering fees shall be distributed
20 on the completion of the analysis by the school facilities board of the
21 school district's request. After receiving monies pursuant to this
22 subsection, the school district shall submit a design development plan for
23 the school or addition to the school facilities board before any monies for
24 construction are distributed. If the school district's request meets the
25 building adequacy standards, the school facilities board may review and
26 comment on the district's plan with respect to the efficiency and
27 effectiveness of the plan in meeting state square footage and facility
28 standards before distributing the remainder of the monies. The school
29 facilities board may decline to fund the project if the square footage is no
30 longer required due to revised enrollment projections.

31 F. The school facilities board shall distribute the monies needed for
32 land for new schools so that land may be purchased at a price that is less
33 than or equal to fair market value and in advance of the construction of the
34 new school. If necessary, the school facilities board may distribute monies
35 for land to be leased for new schools if the duration of the lease exceeds
36 the life expectancy of the school facility by at least fifty per cent. The
37 proceeds derived through the sale of any land purchased or partially
38 purchased with monies provided by the school facilities board shall be
39 returned to the state fund from which it was appropriated and to any other
40 participating entity on a proportional basis. If a school district acquires
41 real property by donation at an appropriate school site approved by the
42 school facilities board, the school facilities board shall distribute an
43 amount equal to twenty per cent of the fair market value of the donated real
44 property that can be used for academic purposes. The school district shall
45 place the monies in the unrestricted capital outlay fund and increase the

1 unrestricted capital outlay limit by the amount of monies placed in the fund.
2 Monies distributed under this subsection shall be distributed from the new
3 school facilities fund. A school district shall not pay a consultant a
4 percentage of the value of any of the following:

5 1. Donations of real property, services or cash from any of the
6 following:

7 (a) Entities that have offered to provide construction services to the
8 school district.

9 (b) Entities that have been contracted to provide construction
10 services to the school district.

11 (c) Entities that build residential units in that school district.

12 (d) Entities that develop land for residential use in that school
13 district.

14 2. Monies received from the school facilities board on behalf of the
15 school district.

16 3. Monies paid by the school facilities board on behalf of the school
17 district.

18 G. In addition to distributions to school districts based on pupil
19 growth projections, a school district may submit an application to the school
20 facilities board for monies from the new school facilities fund if one or
21 more school buildings have outlived their useful life. If the school
22 facilities board determines that the school district needs to build a new
23 school building for these reasons, the school facilities board shall remove
24 the square footage computations that represent the building from the
25 computation of the school district's total square footage for purposes of
26 this section. If the square footage recomputation reflects that the school
27 district no longer meets building adequacy standards, the school district
28 qualifies for a distribution of monies from the new school construction
29 formula in an amount determined pursuant to subsection D of this
30 section. Buildings removed from a school district's total square footage
31 pursuant to this subsection shall not be included in the computation of
32 monies from the building renewal fund established by section 15-2031. The
33 school facilities board may modify the base cost per square foot prescribed
34 in this subsection under extraordinary circumstances for geographic factors
35 or site conditions.

36 H. School districts that receive monies from the new school facilities
37 fund shall establish a district new school facilities fund and shall use the
38 monies in the district new school facilities fund only for the purposes
39 prescribed in this section. By October 15 of each year, each school district
40 shall report to the school facilities board the projects funded at each
41 school in the previous fiscal year with monies from the district new school
42 facilities fund and shall provide an accounting of the monies remaining in
43 the new school facilities fund at the end of the previous fiscal year.

44 I. If a school district has surplus monies received from the new
45 school facilities fund, the school district may use the surplus monies only

1 for capital purposes for the project for up to one year after completion of
2 the project. If the school district possesses surplus monies from the new
3 school construction project that have not been expended within one year of
4 the completion of the project, the school district shall return the surplus
5 monies to the school facilities board for deposit in the new school
6 facilities fund.

7 J. The board's consideration of any application filed after July 1,
8 2001 OR AFTER DECEMBER 31 OF THE YEAR IN WHICH THE PROPERTY BECOMES TERRITORY
9 IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY AS
10 DEFINED IN SECTION 28-8461 for monies to fund the construction of new school
11 facilities proposed to be located in territory in the vicinity of a military
12 airport OR ANCILLARY MILITARY FACILITY ~~as defined in section 28-8461~~ shall
13 include, if after notice is transmitted to the military airport pursuant to
14 section 15-2002 and before the public hearing the military airport provides
15 comments and analysis concerning compatibility of the proposed school
16 facilities with the high noise or accident potential generated by military
17 airport OR ANCILLARY MILITARY FACILITY operations that may have an adverse
18 effect on public health and safety, consideration and analysis of the
19 comments and analysis provided by the military airport before making a final
20 determination.

21 K. If a school district uses its own project manager for new school
22 construction, the members of the school district governing board and the
23 project manager shall sign an affidavit stating that the members and the
24 project manager understand and will follow the minimum adequacy requirements
25 prescribed in section 15-2011.

26 L. The school facilities board shall establish a separate account in
27 the new school facilities fund designated as the litigation account to pay
28 attorney fees, expert witness fees and other costs associated with litigation
29 in which the school facilities board pursues the recovery of damages for
30 deficiencies correction that resulted from alleged construction defects or
31 design defects that the school facilities board believes caused or
32 contributed to a failure of the school building to conform to the building
33 adequacy requirements prescribed in section 15-2011. Attorney fees paid
34 pursuant to this subsection shall not exceed the market rate for similar
35 types of litigation. Monies recovered as damages pursuant to this subsection
36 shall be used to offset debt service on the correction of existing
37 deficiencies as prescribed by section 15-2021. The joint committee on
38 capital review shall conduct an annual review of the litigation account,
39 including the costs associated with current and potential litigation.

40 M. Until the state board of education and the auditor general adopt
41 rules pursuant to section 15-213, subsection J, the school facilities board
42 may allow school districts to contract for construction services and
43 materials through the qualified select bidders list method of project
44 delivery for new school facilities pursuant to this section.

1 Sec. 9. Section 28-8461, Arizona Revised Statutes, is amended to read:
2 28-8461. Definitions

3 In this article, unless the context otherwise requires:

4 1. "Accident potential zone one" means an area three thousand feet
5 wide by five thousand feet long that starts at the end of each clear zone and
6 that is centered and measured on the extended runway centerline, terminating
7 eight thousand feet from the end of each runway AND, FOR AN ANCILLARY
8 MILITARY FACILITY, INCLUDES AN AREA DELINEATED AS ACCIDENT POTENTIAL ZONE ONE
9 IN THE MAP DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

10 2. "Accident potential zone two" means an area three thousand feet
11 wide by seven thousand feet long that starts at the end of each accident
12 potential zone one and that is centered and measured on the extended runway
13 centerline, terminating fifteen thousand feet from the end of each runway,
14 except that, for political subdivisions described in paragraph ~~8~~ 9,
15 subdivision (a) OF THIS SECTION, accident potential zone two extends thirty
16 thousand feet southwest from the end of each runway AND, FOR AN ANCILLARY
17 MILITARY FACILITY, INCLUDES AN AREA DELINEATED AS ACCIDENT POTENTIAL ZONE TWO
18 IN THE MAP DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

19 3. "Airport" means an area of land or water that is designed and set
20 aside for the landing and taking off of aircraft and that is utilized or to
21 be utilized in the interest of the public for those purposes.

22 4. "Airport hazard" means a structure, tree or use of land that
23 obstructs the air space required for flight of aircraft in taking off or
24 landing at an airport or that is otherwise hazardous to aircraft taking off
25 or landing.

26 5. "Airport hazard area" means an area of land or water on which an
27 airport hazard might be established if not prevented as provided in this
28 article.

29 6. "Airstrip" means a strip of ground that is artificially or
30 naturally surfaced and that is designed and used at an airport or landing
31 field for the landing and takeoff of aircraft.

32 7. "ANCILLARY MILITARY FACILITY" MEANS, FOR POLITICAL SUBDIVISIONS
33 DESCRIBED IN PARAGRAPH 9, SUBDIVISION (a) OF THIS SECTION, THE MILITARY
34 AUXILIARY AIRFIELD THAT IS IDENTIFIED ON THE MAP THAT IS DESIGNATED AS LUKE
35 AIR FORCE BASE AUXILIARY AIRFIELD #1, THAT IS DATED MARCH 1, 2004 AND THAT
36 IS ON FILE IN PRINTED FORMAT AT THE STATE LAND DEPARTMENT ON THE EFFECTIVE
37 DATE OF THIS AMENDMENT TO THIS SECTION PURSUANT TO SECTION 37-102.

38 ~~7.~~ 8. "Clear zone" means an area three thousand feet long measured
39 along the extended runway centerline beginning at the end of all main
40 military runways and three thousand feet wide centered on and measured at
41 right angles to the extended runway centerline AND, FOR AN ANCILLARY MILITARY
42 FACILITY, INCLUDES AN AREA DELINEATED AS A CLEAR ZONE IN THE MAP DESCRIBED
43 IN PARAGRAPH 7 OF THIS SECTION.

44 ~~8.~~ 9. "High noise or accident potential zone" means any property
45 located in the following zones:

1 (a) In political subdivisions located in a county with a population
2 of two million or more persons, within the 1988 noise contours developed and
3 recognized by the regional planning agency in that county that includes the
4 arrival and departure corridor that is the accident potential zone one and
5 accident potential zone two plus the land area described as
6 follows: starting two hundred feet from the south end of the westernmost
7 runway at a width of one thousand five hundred feet west and two thousand
8 five hundred feet east, measured perpendicular to the centerline of the
9 runway, and extending southwesterly parallel to the runway for a distance of
10 thirty thousand feet.

11 (b) In political subdivisions located in a county with a population
12 of more than eight hundred thousand persons but less than two million
13 persons, the area southeast of the runway within the noise contours
14 established by the most recent air installation compatible use zone report
15 recognized by the military airport and political subdivisions in that county,
16 including the arrival and departure corridor that is the accident potential
17 zone one and accident potential zone two plus the land area described as
18 follows: starting two hundred feet from the southeast runway end at a width
19 of two thousand feet and extending outward thirty thousand feet to a width
20 of ten thousand four hundred feet.

21 (c) In political subdivisions located in a county with a population
22 of eight hundred thousand persons or less, within the noise contours
23 established by the most recent air installation compatible use zone report
24 recognized by the military airport and political subdivisions in that county,
25 including the arrival and departure corridor that is the accident potential
26 zone one and accident potential zone two plus the land area described as
27 follows: starting two hundred feet from the end points of the main runways
28 and at a width of three thousand feet and symmetrical about a centerline
29 between the runways extending outward to a point thirty thousand feet from
30 the point of beginning. The outer width is seventeen thousand five hundred
31 feet.

32 (d) FOR AN ANCILLARY MILITARY FACILITY, THE LAND AREA INSIDE THE F-16
33 NOISE CONTOUR LINES AND THE ARRIVAL AND DEPARTURE CORRIDORS DESIGNATED AS THE
34 ACCIDENT POTENTIAL ZONE ONE AND THE ACCIDENT POTENTIAL ZONE TWO ON THE MAP
35 DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

36 ~~9.~~ 10. "Military airport" means an airport that is operated by an
37 armed force of the United States and that is primarily used for military
38 fixed wing aircraft operations, excluding a runway or airstrip that is not
39 immediately adjacent to facilities primarily used for operational control,
40 maintenance and permanent parking of aircraft.

41 ~~10.~~ 11. "Occupied building" means any building where people live,
42 work or are otherwise received.

43 ~~11.~~ 12. "Person" means an individual, firm, partnership, corporation,
44 company, association, joint stock association or body politic, including any

1 trustee, receiver, assignee or other representative of a trustee, receiver
2 or assignee.

3 ~~12.~~ 13. "Political subdivision" means a city, town or county and
4 includes a school district.

5 ~~13.~~ 14. "Previous reporting period" means from July 1 of the year
6 before the report is due through June 30 of the year the report is due.

7 ~~14.~~ 15. "Runway" means an artificially surfaced strip of ground that
8 is designed and used at an airport for the landing and takeoff of aircraft.

9 ~~15.~~ 16. "School" means any public institution established for the
10 purposes of offering instruction to pupils in programs for preschool children
11 with disabilities, kindergarten programs or any combination of grades one
12 through twelve.

13 ~~16.~~ 17. "School district" means a political subdivision of this state
14 with geographic boundaries organized for the purpose of the administration,
15 support and maintenance of the public schools or an accommodation school.

16 ~~17.~~ 18. "School district development plan" means any proposal to
17 build or expand a school but does not include repairing, maintaining or
18 remodeling an existing school.

19 ~~18.~~ 19. "Structure" means an object that is constructed or installed
20 by a human including a building, tower, smokestack or overhead transmission
21 line.

22 ~~19.~~ 20. "Territory in the vicinity of ~~a military airport~~" means any
23 property located in the following zones:

24 (a) In counties that have a population of two million or more
25 persons, the zone is ten miles to the north, south and west and four miles
26 to the east parallel from the center of the main runway of a military
27 airport.

28 (b) In counties that have a population of more than eight hundred
29 thousand but less than two million persons, the zone is five miles to the
30 northwest along a line extending from the end of the northwest runway, one
31 and one-half miles to the southwest, six and one-half miles to the northeast
32 and perpendicular to the runway centerline and ten miles to the southeast
33 along a line extending from the end of the southeast runway of a military
34 airport.

35 (c) In counties that have a population of eight hundred thousand
36 persons or less, the zone is five miles to the north, south and west and ten
37 miles to the east of the center of the main runway of a military airport.

38 (d) FOR AN ANCILLARY MILITARY FACILITY, THE LAND DESIGNATED AS THE
39 TERRITORY IN THE VICINITY OF A MILITARY AIRPORT IN THE MAP DESCRIBED IN
40 PARAGRAPH 7 OF THIS SECTION.

41 ~~20.~~ 21. "Tree" means an object of natural growth.

1 Sec. 10. Section 28-8480, Arizona Revised Statutes, is amended to
2 read:

3 28-8480. Military airport continuation; land acquisition

4 In addition to authority granted pursuant to other provisions of law,
5 a political subdivision may acquire, by exchange, purchase, lease, donation,
6 devise or condemnation, land or interests in land for the continued operation
7 of a military airport OR ANCILLARY MILITARY FACILITY.

8 Sec. 11. Section 28-8481, Arizona Revised Statutes, is amended to
9 read:

10 28-8481. Planning and zoning; military airport operation
11 compatibility; compliance review; penalty; definition

12 A. A political subdivision that has territory in the vicinity of a
13 military airport OR ANCILLARY MILITARY FACILITY that includes property in a
14 high noise or accident potential zone shall adopt comprehensive and general
15 plans and school district development plans, if applicable, for property in
16 the high noise or accident potential zone to assure development compatible
17 with the high noise and accident potential generated by military airport AND
18 ANCILLARY MILITARY FACILITY operations that have or may have an adverse
19 effect on public health and safety. Each political subdivision, excluding
20 school districts, shall adopt and enforce zoning regulations for property in
21 the high noise or accident potential zone to assure development compatible
22 with the high noise and accident potential generated by military airport AND
23 ANCILLARY MILITARY FACILITY operations that have or may have an adverse
24 effect on public health and safety.

25 B. A political subdivision that has territory in the vicinity of a
26 military airport OR ANCILLARY MILITARY FACILITY shall incorporate sound
27 attenuation standards pursuant to section 28-8482 into any building code in
28 existence on or adopted after July 1, 2001 OR AFTER JULY 1 OF THE YEAR IN
29 WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR
30 ANCILLARY MILITARY FACILITY. This section does not affect or require the
31 modification of any building permit issued before July 1, 2001 OR BEFORE JULY
32 1 OF THE YEAR IN WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A
33 MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY.

34 C. A political subdivision that has territory in the vicinity of a
35 military airport OR ANCILLARY MILITARY FACILITY that includes property in a
36 high noise or accident potential zone shall adopt, administer and enforce the
37 zoning regulations or school district development plans authorized by
38 subsection A of this section in the same manner as the comprehensive zoning
39 ordinance or school district development plans of the political subdivision
40 as provided by law, except that a variance shall not be granted without a
41 specific finding that the purpose of military airport OR ANCILLARY MILITARY
42 FACILITY compatibility is preserved.

1 D. This section does not affect the existing authority of a political
2 subdivision to plan and zone on the basis of noise or accident potential in
3 the vicinity of an airport owned or controlled by the political subdivision
4 or to adopt restrictions or limitations in addition to those required by this
5 section applicable to territory in the vicinity of a military airport OR
6 ANCILLARY MILITARY FACILITY.

7 E. This section does not restrict, limit or modify, or authorize or
8 require any political subdivision to restrict, limit or modify, the right of
9 a landowner to undertake and complete development and use of any property
10 under the terms and conditions of a development plan or school district
11 development plan approved on or before December 31, 2000, OR ON OR BEFORE
12 DECEMBER 31 OF THE YEAR IN WHICH THE DEVELOPMENT'S PROPERTY BECOMES TERRITORY
13 IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY OR
14 PURSUANT TO A WRITTEN DETERMINATION OF COMPATIBILITY ISSUED BY THE MILITARY
15 AIRPORT OR ANCILLARY MILITARY FACILITY ON OR BEFORE DECEMBER 31, 2004, by the
16 political subdivision in whose territory OR AREA OF JURISDICTION the property
17 is located, except that the development must comply with the sound
18 attenuation standards and specifications incorporated into any building code
19 adopted pursuant to section 28-8482 by the political subdivision in whose
20 territory OR AREA OF JURISDICTION the development is located. For purposes
21 of this section, "development plan":

22 1. ~~Means a plan submitted to and approved by the governing body of~~
23 ~~the political subdivision pursuant to a zoning ordinance or regulation~~
24 ~~adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6~~
25 ~~and that describes with reasonable certainty the density and intensity of use~~
26 ~~for a specific parcel or parcels of property.~~

27 2. ~~Includes a planned community development plan, a planned area~~
28 ~~development plan, a planned unit development plan, a development plan that~~
29 ~~is the subject of a development agreement adopted pursuant to section~~
30 ~~9-500.05 or 11-1101, a site plan, a subdivision plat or any other land use~~
31 ~~approval designation that is the subject of a zoning ordinance adopted~~
32 ~~pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6.~~

33 F. THIS SECTION DOES NOT RESTRICT, LIMIT OR MODIFY, OR AUTHORIZE OR
34 REQUIRE ANY POLITICAL SUBDIVISION TO RESTRICT, LIMIT OR MODIFY, THE RIGHT OF
35 A LANDOWNER TO UNDERTAKE AND COMPLETE DEVELOPMENT AND USE OF ANY PROPERTY
36 LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE THAT IS APPURTENANT TO AN
37 ANCILLARY MILITARY FACILITY UNDER THE TERMS AND CONDITIONS OF A DEVELOPMENT
38 PLAN OR SCHOOL DISTRICT DEVELOPMENT PLAN APPROVED ON OR BEFORE DECEMBER 31,
39 2004 BY THE POLITICAL SUBDIVISION IN WHOSE TERRITORY OR AREA OF JURISDICTION
40 THE PROPERTY IS LOCATED OR PURSUANT TO A WRITTEN DETERMINATION OF
41 COMPATIBILITY ISSUED BY THE MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY
42 ON OR BEFORE DECEMBER 31, 2004, EXCEPT THAT THE DEVELOPMENT SHALL COMPLY WITH
43 THE SOUND ATTENUATION STANDARDS AND SPECIFICATIONS INCORPORATED INTO ANY
44 BUILDING CODE ADOPTED PURSUANT TO SECTION 28-8482 BY THE POLITICAL

1 SUBDIVISION IN WHOSE TERRITORY OR AREA OF JURISDICTION THE DEVELOPMENT IS
2 LOCATED.

3 ~~F.~~ G. On or after July 1, 2001 OR ON OR AFTER DECEMBER 31 OF THE
4 YEAR IN WHICH THE PROPERTY BECOMES TERRITORY IN A HIGH NOISE OR ACCIDENT
5 POTENTIAL ZONE, a political subdivision that has territory in a high noise
6 or accident potential zone shall notify the owner or owners of property in
7 the high noise and accident potential zone of any additions or changes under
8 this section to the general plan, comprehensive plan, zoning regulations or
9 school district development plan of the political subdivision applicable to
10 property in the high noise or accident potential zone. The political
11 subdivision shall provide a notice of such additions or changes by
12 publication as provided in section 9-462.04, subsection A or section 11-829,
13 subsection C, including a statement that the property is located in a high
14 noise or accident potential zone, at least thirty days before final approval
15 of the addition to or change in the general plan, ~~comprehensive plan~~
16 PERMITTED LAND USES, zoning regulation or school district development plan
17 and within thirty days following the final approval of such an addition to
18 or change in the general plan, ~~comprehensive plan~~ PERMITTED LAND USES, zoning
19 regulation or school district development plan.

20 ~~G.~~ H. Any property owner described in subsection ~~F~~ G of this
21 section shall notify potential purchasers of the property and any potential
22 lessees or renters that the property is located in a high noise and accident
23 potential zone and is subject to the requirements of this section.

24 ~~H.~~ I. On or before August 15 of each year, each political
25 subdivision that has territory that includes property in a high noise or
26 accident potential zone or that is otherwise subject to the requirements of
27 section 28-8482 shall file with the attorney general, and with each political
28 subdivision that has territory in the vicinity of the military airport OR
29 ANCILLARY MILITARY FACILITY, a report that demonstrates compliance with this
30 section and section 28-8482 during the previous reporting period. Compliance
31 shall be determined with regard to the law in effect on June 30 of the year
32 in which the report is due. The report shall include the following
33 information regarding the territory in the high noise or accident potential
34 zone, except the school district's report shall not include the information
35 in paragraphs 1, 2, 3, 4 and 7 of this subsection:

36 1. Zoning map amendments within the high noise or accident potential
37 zone.

38 2. Zoning or subdivision ordinance or regulation text amendments
39 applicable to property within the high noise or accident potential zone.

40 3. Preliminary and final plat approvals for property within the high
41 noise or accident potential zone.

42 4. Variances from zoning or subdivision ordinances for property
43 within the high noise or accident potential zone.

1 5. Comprehensive, general or specific plan or school district
2 development plan amendments for property within the high noise or accident
3 potential zone.

4 6. A statement that the political subdivision complied with the
5 notification requirements of subsection ~~F~~ G of this section.

6 7. A statement that the political subdivision adopted or amended
7 building code provisions pursuant to section 28-8482.

8 ~~I~~. J. If the attorney general has not received a report or affidavit
9 from a political subdivision that is required to file a report pursuant to
10 subsection ~~H~~ I of this section within thirty days after the date the report
11 or affidavit was required to be filed pursuant to subsection ~~H~~ I or ~~J~~ K of
12 this section, the attorney general shall send a written notice by certified
13 mail, return receipt requested, to the political subdivision stating that the
14 attorney general has not received the report or affidavit as required by this
15 section.

16 ~~J~~. K. If a political subdivision that is required to file a report
17 pursuant to subsection ~~H~~ I of this section has previously filed a report in
18 compliance with subsection ~~H~~ I of this section and that political
19 subdivision has not taken any of the actions described in subsection ~~H~~ I of
20 this section since filing that report, the political subdivision shall file
21 with the attorney general an affidavit stating that no actions were taken by
22 the political subdivision during that period.

23 ~~K~~. L. The attorney general shall determine compliance with this
24 section in accordance with the following requirements applicable to zoning
25 and development in a high noise or accident potential zone and to zoning and
26 development in accident potential zone one and accident potential zone two.
27 Compliance with respect to territory located in the arrival and departure
28 corridor but outside the accident potential zone one, two and noise contour
29 lines as described in section 28-8461, paragraph ~~8~~ 9, subdivisions (b) and
30 (c) shall be determined in accordance with the requirements applicable to
31 territory located in the 65-69 day-night sound level as listed below. This
32 subsection shall not preclude a determination of compliance if the political
33 subdivision and the military airport OR ANCILLARY MILITARY FACILITY mutually
34 agree that an individual use is compatible and consistent with the high noise
35 or accident potential of the military airport OR ANCILLARY MILITARY FACILITY,
36 AS APPLICABLE. ALTERNATIVELY, FOR AN INDIVIDUAL USE OR A PLAN FOR
37 DEVELOPMENT SUBMITTED TO A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY
38 BEFORE DECEMBER 31, 2004, THIS SUBSECTION DOES NOT PRECLUDE THE MILITARY
39 AIRPORT FROM DETERMINING THAT THE INDIVIDUAL USE OR PLAN FOR DEVELOPMENT IS
40 COMPATIBLE AND CONSISTENT WITH THE HIGH NOISE OR ACCIDENT POTENTIAL ZONE OF
41 THE MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY.

	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ one	APZ two
1							
2							
3							
4	Zoning and development in high						
5	noise or accident potential						
6	zone						
7							
8	<u>Residential</u>						
9	Residential uses other than						
10	the residential uses listed						
11	below						
12	Yes ⁽⁹⁾	Yes ⁽¹⁰⁾	Yes ⁽¹¹⁾	No ⁽¹³⁾	No ⁽¹³⁾	No	No ⁽¹³⁾
13	Single family residential						
14	that is the subject of						
15	zoning approved on or						
16	before December 31, 2000,						
17	OR ON OR BEFORE DECEMBER 31						
18	OF THE YEAR IN WHICH THE						
19	PROPERTY BECOMES TERRITORY						
20	IN THE VICINITY OF A						
21	MILITARY AIRPORT,						
22	that permits one dwelling						
23	unit per acre or less						
24	Yes ⁽⁹⁾	Yes ⁽¹⁰⁾	Yes ⁽¹¹⁾	Yes ⁽¹²⁾	No ⁽¹³⁾	No	No ⁽¹³⁾
25	Single family residential						
26	that is the primary residence						
27	for persons engaging in						
28	agricultural use and						
29	ancillary residential						
30	buildings incident to the						
31	primary agricultural use						
32	<u>Transportation, communications</u>						
33	<u>and utilities</u>						
34	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽¹⁵⁾
35	Yes	Yes	Yes	Yes	Yes	Yes	Yes
36	Yes	Yes	Yes	Yes	Yes	Yes ⁽¹⁵⁾	Yes ⁽¹⁵⁾
37	Yes	Yes ⁽²⁾	Yes ⁽³⁾	No	No	Yes ⁽¹⁵⁾	Yes ⁽¹⁵⁾
38	(noise sensitive)						
39	Yes	Yes	Yes	No	No	Yes ⁽¹⁵⁾	Yes ⁽¹⁵⁾
40	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	Yes ⁽⁸⁾	Yes ⁽¹⁵⁾	Yes ⁽¹⁵⁾
41	Utilities						
42	Other transportation,						
43	communications and utilities						
44	<u>Commercial/retail trade</u>						
45	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes
46	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes
47	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No
48	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No
49	Wholesale trade						
50	Building materials-retail						
51	General merchandise-retail						
52	Food-retail						

1	Automotive and marine	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	No	No	No	No/Yes ⁽¹⁷⁾
2	Apparel and accessories-retail	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No
3	Eating and drinking places	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No
4	Furniture and home	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No/Yes ⁽¹⁷⁾
5	furnishings-retail							
6	Other retail trade	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No
7	<u>Personal and business services</u>							
8	Finance, insurance and real estate	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	Yes
9	Personal services	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	Yes
10	Business services	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	Yes
11	Repair services	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes
12	Contract construction services	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	No	No	No	Yes
13	Indoor recreation services	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	No	No	No	Yes
14	Other services	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	No	No	No	Yes
15	<u>Industrial/manufacturing</u>							
16	Food and kindred products	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
17	Textile mill products	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
18	Apparel	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
19	Lumber and wood products	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
20	Furniture and fixtures	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
21	Paper and allied products	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
22	Printing and publishing	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
23	Chemicals and allied products	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	No
24	Petroleum refining and	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	No
25	related industries							
26	Rubber and miscellaneous plastic	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
27	Stone, clay and glass products	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
28	Primary metal industries	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
29	Fabricated metal products	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
30	Professional, scientific and	Yes	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No
31	controlling instruments							
32	Miscellaneous manufacturing	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	Yes ⁽⁸⁾
33	<u>Public and quasi-public</u>							
34	<u>services</u>							
35	Government services	Yes ⁽¹⁾	Yes ⁽²⁾	Yes ⁽²⁾	No	No	No	Yes ⁽⁸⁾
36	Cultural activities,	Yes(1)	Yes(2)	No	No	No	No	No
37	including churches							
38	Medical and other health							
39	services	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No	No
40	Cemeteries	Yes ⁽⁵⁾	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	No	Yes
41	Nonprofit organizations	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No	Yes
42	Correctional facilities	Yes ⁽¹⁾	Yes ⁽²⁾	Yes ⁽³⁾	Yes ⁽⁴⁾	No	No	Yes
43	Other public and quasi-public	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No	Yes ⁽⁸⁾
44	services							

1	<u>Outdoor recreation</u>							
2	Playgrounds and neighborhood							
3	parks	Yes	Yes	No	No	No	Yes ⁽¹⁵⁾	Yes
4	Community and regional	Yes	Yes	No	No	No	Yes ⁽¹⁵⁾	Yes
5	Nature exhibits	Yes	No	No	No	No	No	No
6	Spectator sports, including							
7	arenas	Yes ⁽¹⁴⁾	Yes ⁽¹⁴⁾	No	No	No	No	No
8	Golf courses and riding stables	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	No	No	Yes ⁽¹⁵⁾	Yes
9	Water based recreational areas	Yes	Yes ⁽⁵⁾	Yes ⁽⁶⁾	No	No	No	No
10	Resort and group camps	Yes ⁽¹⁾	Yes ⁽²⁾	No	No	No	No	No
11	Auditoriums and concert halls	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	No	No	No
12	Outdoor amphitheaters and	Yes ⁽¹⁴⁾	Yes ⁽¹⁴⁾	Yes ⁽¹⁴⁾	No	No	No	No
13	music shells							
14	Other outdoor recreation	Yes	Yes ⁽¹⁴⁾	Yes ⁽¹⁴⁾	No	No	No	No
15	<u>Resource production,</u>							
16	<u>extraction and open space</u>							
17	Agriculture (except livestock)	Yes ⁽⁹⁾	Yes ⁽¹⁰⁾	Yes ⁽¹¹⁾	Yes ⁽¹²⁾	Yes ⁽¹³⁾	Yes ⁽¹³⁾	Yes ⁽¹³⁾
18	Livestock farming and animal	Yes ⁽⁹⁾	Yes ⁽¹⁰⁾	Yes ⁽¹¹⁾	Yes ⁽¹²⁾	Yes ⁽¹³⁾	Yes ⁽¹³⁾	Yes ⁽¹³⁾
19	breeding							
20	Forestry activities	Yes ⁽⁹⁾	Yes ⁽¹⁰⁾	Yes ⁽¹³⁾	Yes ⁽¹³⁾	Yes ⁽¹³⁾	No	Yes
21	Fishing activities and	Yes	Yes	No	No	No	No	No
22	related services							
23	Mining activities	Yes	Yes	Yes	Yes	Yes	No	Yes ⁽¹⁶⁾
24	Permanent open space	Yes	Yes	Yes	Yes	Yes	Yes	Yes
25	Water areas (not incidental to	Yes	Yes	No	No	No	No	No
26	farming)							

(1) Measures to achieve an outdoor to indoor noise reduction level of twenty-five decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(2) Measures to achieve an outdoor to indoor noise reduction level of thirty decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(3) Measures to achieve an outdoor to indoor noise reduction level of thirty-five decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of the approval, that use of noise reduction level criteria will not alleviate outdoor noise.

1 (4) Measures to achieve an outdoor to indoor noise reduction level of
2 forty decibels pursuant to an ordinance adopted under section 28-8482 must
3 be incorporated into the design and construction of all buildings and the
4 political subdivision must make an express finding, as part of the approval,
5 that use of noise reduction level criteria will not alleviate outdoor noise.

6 (5) Measures to achieve an outdoor to indoor noise reduction level of
7 twenty-five decibels must be incorporated into the design and construction
8 of portions of buildings where the public is received, office areas, noise
9 sensitive areas or where normal noise level is low.

10 (6) Measures to achieve an outdoor to indoor noise reduction level of
11 thirty decibels must be incorporated into the design and construction of
12 portions of buildings where the public is received, office areas, noise
13 sensitive areas or where normal noise level is low.

14 (7) Measures to achieve an outdoor to indoor noise reduction level of
15 thirty-five decibels must be incorporated into the design and construction
16 of portions of buildings where the public is received, office areas, noise
17 sensitive areas or where normal noise level is low.

18 (8) Measures to achieve an outdoor to indoor noise reduction level of
19 forty decibels must be incorporated into the design and construction of
20 portions of buildings where the public is received, office areas, noise
21 sensitive areas or where normal noise level is low.

22 (9) Measures to achieve an outdoor to indoor noise reduction level of
23 twenty-five decibels must be incorporated into the design and construction
24 of new residential buildings or expansions of existing residential buildings.

25 (10) Measures to achieve an outdoor to indoor noise reduction level of
26 thirty decibels must be incorporated into the design and construction of new
27 residential buildings or expansions of existing residential buildings.

28 (11) Measures to achieve an outdoor to indoor noise reduction level of
29 thirty-five decibels must be incorporated into the design and construction
30 of new residential buildings or expansions of existing residential buildings.

31 (12) Measures to achieve an outdoor to indoor noise reduction level of
32 forty decibels must be incorporated into the design and construction of new
3 residential buildings or expansions of existing residential buildings.

4 (13) No new residential buildings or expansions of existing residential
5 buildings are permitted.

6 (14) Compatible if special sound reinforcement systems are installed.

7 (15) No aboveground buildings or structures.

8 (16) No new buildings or improvements or expansion of nonagriculture
9 buildings or improvements for uses that result in the release of any
10 substance into the air that would impair visibility or otherwise interfere
11 with operating aircraft, such as any of the following:

12 (a) Steam, dust and smoke.

13 (b) Direct or indirect reflective light emissions.

1 (c) Electrical emissions that would interfere with aircraft and air
2 force communications or navigational aid systems or aircraft navigational
3 equipment.

4 (d) The attraction of birds or waterfowl such as operation of sanitary
5 landfills or maintenance of feeding stations.

6 (e) Explosives facilities or similar activities.

7 (17) If located in the extended portion of accident potential zone two
8 in territory of a political subdivision described in section 28-8461,
9 paragraph ~~8~~ 9, subdivision (a).

10 (18) Uses not listed are presumed to not be compatible. This does not
11 preclude a determination of compliance if the political subdivision and the
12 military airport mutually agree that an individual use is compatible and
13 consistent with the high noise or accident potential of the military airport
14 OR ANCILLARY MILITARY FACILITY.

15 ~~L~~ M. The attorney general shall notify a political subdivision by
16 certified mail, return receipt requested, if, from the content of the report
17 filed by the political subdivision pursuant to subsection ~~H~~ I of this
18 section or other evidence, the attorney general has probable cause to believe
19 that the political subdivision has not complied with the requirements set
20 forth in subsection A, C, ~~F~~ G or ~~K~~ L of this section or section
21 28-8482. Nothing in this section shall authorize or permit a finding of
22 probable cause of noncompliance with respect to territory that is the subject
23 of a development plan as ~~defined~~ DESCRIBED in subsection E OR F of this
24 section ~~approved on or before December 31, 2000~~ except under section 28-8482
25 if applicable. A political subdivision that receives a notice from the
26 attorney general pursuant to this subsection shall demonstrate compliance
27 with subsection A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482 within
28 forty-five days after receipt of the notice. If a political subdivision
29 fails to demonstrate compliance with subsection A, C, ~~F~~ G or ~~K~~ L of this
30 section or section 28-8482 within forty-five days after receipt of the
31 notice, the attorney general shall bring an enforcement action under this
32 section.

33 ~~M~~ N. The attorney general shall provide to all political
34 subdivisions with territory in the vicinity of a military airport OR
35 ANCILLARY MILITARY FACILITY a copy of the report prepared and submitted by
36 the attorney general pursuant to subsection ~~S~~ T of this section indicating
37 those political subdivisions that are in compliance or noncompliance with
38 subsection A, C, ~~F~~ G or ~~K~~ L of this section and section 28-8482. If a
39 political subdivision files in a timely manner a report or affidavit required
40 under subsection ~~H~~ I or ~~J~~ K of this section and any zoning map amendment,
41 zoning or subdivision ordinance or regulation text amendment, final plat
42 approval, variance from zoning or subdivision ordinance or comprehensive,
43 general or specific plan or school district development plan amendment that
44 has occurred during the reporting period is consistent with subsection ~~K~~ L
45 of this section and the political subdivision provided the notice required

1 pursuant to subsection ~~F~~ G of this section or the attorney general fails to
2 provide notice of probable cause of noncompliance pursuant to subsection ~~t~~
3 M of this section on or before November 15 of that year, the political
4 subdivision is deemed to have complied with the requirements of this section
5 and section 28-8482 during the period covered by the report or affidavit.

6 ~~N~~. O. If any owner of property that is the subject of a report filed
7 pursuant to subsection ~~H~~ I of this section or political subdivision that is
8 required to file a report pursuant to subsection ~~H~~ I of this section
9 disagrees with a determination of the attorney general of probable cause of
10 noncompliance pursuant to subsection ~~t~~ M of this section, the owner of
11 property or political subdivision may appeal the determination of the
12 attorney general to the superior court in the county in which the affected
13 property or territory is located within thirty days after providing the
14 attorney general written notice of the appeal by certified mail.

15 ~~O~~. P. The following apply to enforcement actions brought under this
16 section:

17 1. The attorney general may institute a civil action in the name of
18 this state in the superior court in the county of the alleged violation
19 against a political subdivision that is required to file a report pursuant
20 to subsection ~~H~~ I of this section to restrain, enjoin, correct or abate a
21 violation of this section or section 28-8482, to collect a civil penalty
22 ordered pursuant to this section and to collect attorney fees and costs
23 ordered pursuant to this section if any of the following applies:

24 (a) The political subdivision fails to file a report or affidavit
25 required by this section within thirty days after the political subdivision
26 receives the written notice from the attorney general that a report has not
27 been filed.

28 (b) From the content of the report filed by the political
29 subdivision, or other evidence, the attorney general has determined that
30 there is probable cause to believe that the political subdivision has not
31 complied with the requirements set forth in subsection A, C, ~~F~~ G or ~~K~~ L of
32 this section or section 28-8482 and forty-five days have passed since the
33 political subdivision received written notice from the attorney general
34 pursuant to subsection ~~t~~ M of this section.

35 (c) The attorney general has probable cause to believe that any
36 change, variance or exemption made by a political subdivision that is
37 required to file a report pursuant to subsection ~~H~~ I of this section to its
38 general plan, ~~or~~ comprehensive plan or school district development plan
39 applicable to property within the high noise or accident potential zone
40 violates this section and forty-five days have passed since the political
41 subdivision received written notice from the attorney general pursuant to
42 subsection ~~t~~ M of this section.

43 2. The court shall award reasonable attorney fees and other costs in
44 favor of the prevailing party for any civil enforcement action brought under
45 this section. If the attorney general prevails, monies awarded pursuant to

1 this paragraph shall be retained by the attorney general and are continuously
2 appropriated.

3 3. The court may assess civil penalties in favor of this state to be
4 deposited in the state general fund as follows:

5 (a) For failure of a political subdivision to file a report or
6 affidavit required by subsection ~~H~~ I or ~~J~~ K of this section within thirty
7 days after receiving notice from the attorney general, the political
8 subdivision is liable for a civil penalty of up to two hundred dollars for
9 each day after the first thirty days and up to three hundred dollars for each
10 subsequent day up to a maximum of ten thousand dollars.

11 (b) For failure of a political subdivision that is required to file
12 a report pursuant to subsection ~~H~~ I of this section to comply with the
13 requirements of subsection A, C, ~~F~~ G or ~~K~~ L of this section or section
14 28-8482, the political subdivision is liable for a civil penalty of up to
15 five hundred dollars for each day for the first ten days and up to five
16 thousand dollars for each subsequent day up to a maximum of fifty thousand
17 dollars. If the political subdivision demonstrates compliance with
18 subsections A, C, ~~F~~ G and ~~K~~ L of this section and section 28-8482 within
19 forty-five days after receipt of a notice of noncompliance from the attorney
20 general pursuant to subsection ~~L~~ M of this section, the accrued penalties
21 shall be waived. If the political subdivision demonstrates a good faith
22 effort to comply with subsections A, C, ~~F~~ G and ~~K~~ L of this section and
23 section 28-8482, as applicable, within forty-five days after receipt of a
24 notice of noncompliance from the attorney general pursuant to subsection ~~L~~ M
25 of this section, the attorney general may waive accrued penalties.

26 ~~P~~ Q. A political subdivision that has territory in the vicinity of
27 a military airport OR ANCILLARY MILITARY FACILITY that includes property in
28 a high noise or accident potential zone shall submit any proposed
29 comprehensive, general or school district development plan or amendments that
30 are applicable to property within the high noise or accident potential zone
31 to the attorney general at least fifteen days before the first public hearing
32 required pursuant to section 9-461.06 or 11-806.

33 ~~Q~~ R. On written request of the attorney general, a political
34 subdivision shall provide records kept pursuant to this section or section
35 28-8482 within thirty days after the request.

36 ~~R~~ S. The attorney general may investigate any complaint received
37 that a political subdivision that has territory in the vicinity of a military
38 airport OR ANCILLARY MILITARY FACILITY is not in compliance with subsection
39 A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482.

40 ~~S~~ T. On or before November 15 of each year, the attorney general
41 shall submit to the Arizona military airport preservation committee
42 established by section 41-3301 a report indicating those political
43 subdivisions that are in compliance with subsections A, C, ~~F~~ G and ~~K~~ L of
44 this section and section 28-8482, those political subdivisions that are not
45 in compliance with subsections A, C, ~~F~~ G and ~~K~~ L of this section and

1 section 28-8482 and the actions that the attorney general is taking, or
2 intending to take, to bring those political subdivisions not in compliance
3 with subsections A, C, ~~F~~ G and ~~K~~ L of this section or section 28-8482 into
4 compliance.

5 U. A POLITICAL SUBDIVISION SHALL NOT PERMIT OR APPROVE A DIVISION OF
6 LAND ZONED FOR RESIDENTIAL USE THAT IS IN A HIGH NOISE OR ACCIDENT POTENTIAL
7 ZONE OF AN ANCILLARY MILITARY FACILITY IF THE DIVISION WOULD RESULT IN A LOT,
8 PARCEL OR FRACTIONAL INTEREST BEING FOUR ACRES OR LESS UNLESS THE LAND
9 DIVISION IS PART OF A DEVELOPMENT PLAN OR A DEVELOPMENT AGREEMENT APPROVED
10 BEFORE JULY 30, 2004 OR IS DETERMINED BY THE MILITARY AIRPORT OR ANCILLARY
11 MILITARY FACILITY TO BE COMPATIBLE WITH ITS OPERATIONS BEFORE DECEMBER 31,
12 2004. A POLITICAL SUBDIVISION MAY GRANT A WAIVER FROM THIS SUBSECTION.

13 V. FOR THE PURPOSES OF THIS SECTION, "DEVELOPMENT PLAN":

14 1. MEANS A PLAN THAT IS SUBMITTED TO AND APPROVED BY THE GOVERNING
15 BODY OF THE POLITICAL SUBDIVISION PURSUANT TO A ZONING ORDINANCE OR
16 REGULATION ADOPTED PURSUANT TO TITLE 9, CHAPTER 4, ARTICLE 6.1 OR TITLE 11,
17 CHAPTER 6 AND THAT DESCRIBES WITH REASONABLE CERTAINTY THE DENSITY AND
18 INTENSITY OF USE FOR A SPECIFIC PARCEL OR PARCELS OF PROPERTY.

19 2. INCLUDES A PLANNED COMMUNITY DEVELOPMENT PLAN, A PLANNED AREA
20 DEVELOPMENT PLAN, A PLANNED UNIT DEVELOPMENT PLAN, A DEVELOPMENT PLAN THAT
21 IS THE SUBJECT OF A DEVELOPMENT AGREEMENT ADOPTED PURSUANT TO SECTION
22 9-500.05 OR 11-1101, A SITE PLAN, A SUBDIVISION PLAT OR ANY OTHER LAND USE
23 APPROVAL DESIGNATION THAT IS THE SUBJECT OF A ZONING ORDINANCE ADOPTED
24 PURSUANT TO TITLE 9, CHAPTER 4, ARTICLE 6.1 OR TITLE 11, CHAPTER 6.

25 3. MEANS A CONCEPTUAL PLAN FOR DEVELOPMENT THAT GENERALLY DEPICTS
26 DENSITIES ON A PARTICULAR PROPERTY THAT A MILITARY AIRPORT, AS DESCRIBED IN
27 PARAGRAPH 9, SUBDIVISION (a), DEEMS IS COMPATIBLE WITH THE OPERATION OF THE
28 ANCILLARY MILITARY FACILITY.

29 Sec. 12. Section 28-8482, Arizona Revised Statutes, is amended to
30 read:

31 28-8482. Incorporation of sound attenuation standards in
32 building codes

33 A. A political subdivision that has territory in the vicinity of a
34 military airport OR ANCILLARY MILITARY FACILITY shall incorporate the sound
35 attenuation standards and specifications prescribed in this section into any
36 building code in existence on or adopted after December 31, 2001 OR ADOPTED
37 ON OR AFTER THE DATE THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY
38 AIRPORT OR ANCILLARY MILITARY FACILITY. These standards and specifications
39 apply to new development and alterations for first occupancy that are the
40 subject of building permits issued after December 31, 2001 OR AFTER DECEMBER
41 31 OF THE YEAR IN WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A
42 MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY and that are located on
43 property within the territory in the vicinity of a military airport OR
44 ANCILLARY MILITARY FACILITY and do not apply to new development and
45 alterations that are located on property within corporate limits of a

1 municipality but outside territory in the vicinity of a military airport OR
2 ANCILLARY MILITARY FACILITY.

3 B. Not later than December 31, 2001 OR NOT LATER THAN DECEMBER 31 OF
4 THE YEAR IN WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY
5 AIRPORT OR ANCILLARY MILITARY FACILITY, a political subdivision that has
6 territory in the vicinity of a military airport OR ANCILLARY MILITARY
7 FACILITY shall adopt an ordinance that requires a noise level reduction to
8 be incorporated in the design and construction of any residential building
9 or portions of buildings where the public is received, office areas and where
10 normal noise level is low for first occupancy, including libraries, schools
11 and churches, pursuant to building permits issued after December 31, 2001 in
12 order to achieve a maximum interior noise level of forty-five decibels in
13 areas within the noise contours described in section 28-8461, paragraph 8-
14 9, subdivision (a), (b), ~~or~~ (c) OR (d), as applicable. In order to comply
15 with this section, an ordinance shall require that all residential buildings
16 in territory in the vicinity of a military airport OR ANCILLARY MILITARY
17 FACILITY but outside the noise contours as described in this section shall
18 be constructed with a minimum of R18 exterior wall assembly, a minimum of R30
19 roof and ceiling assembly, dual-glazed windows and solid wood, foam-filled
20 fiberglass or metal doors to the exterior or, if the specified building
21 standards are not met, the political subdivision may approve, as an
22 alternative, a certification by an architect or engineer registered pursuant
23 to title 32, chapter 1 to achieve a maximum interior noise level of
24 forty-five decibels at the time of final construction. A sound attenuation
25 ordinance adopted by a political subdivision pursuant to this subsection
26 shall not require a maximum interior noise level that is less than the
27 maximum interior noise level required by this subsection.

28 C. The sound attenuation requirements of this section do not apply to
29 ancillary buildings used in agricultural land use.

30 D. If the gross floor area of a structure or project is expanded by
31 less than fifty per cent, the requirements of this section apply only to the
32 area of expansion. If the gross floor area of a structure or project is
33 expanded by fifty per cent or more, the requirements of this section apply
34 to the entire structure, except for single family, mobile home, manufactured
35 housing unit or duplex dwellings or any multifamily property used for
36 residential purposes.

37 E. For the purposes of this section, political subdivision does not
38 include a school district.

39 Sec. 13. Section 32-2113, Arizona Revised Statutes, is amended to
40 read:

41 32-2113. Recorded disclosure for territory in the vicinity of a
42 military airport or ancillary military facility

43 A. The commissioner shall execute and record in the office of the
44 county recorder in each county in this state that includes territory in the
45 vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in

1 section 28-8461 a document, applicable to property located within territory
2 in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY, with
3 the following disclosure: "this property is located within territory in the
4 vicinity of a military airport OR ANCILLARY MILITARY FACILITY and may be
5 subject to increased noise and accident potential."

6 B. The attorney general shall prepare in recordable form the document
7 that is executed and recorded by the commissioner pursuant to this section.

8 C. The document that is executed and recorded by the commissioner
9 shall include a legal description of the territory in the vicinity of a
10 military airport OR ANCILLARY MILITARY FACILITY ~~as defined in section~~
11 ~~28-8461~~. The military airport shall cause the legal description to be
12 prepared and shall provide the legal description to the commissioner in
13 recordable form in twelve point font on eight and one-half inch by eleven
14 inch paper.

15 Sec. 14. Section 32-2181, Arizona Revised Statutes, is amended to
16 read:

17 32-2181. Notice to commissioner of intention to subdivide lands;
18 unlawful acting in concert; exceptions; deed
19 restrictions; definition

20 A. Before offering subdivided lands for sale or lease, the subdivider
21 shall notify the commissioner in writing of the subdivider's intention. The
22 notice shall contain:

23 1. The name and address of the owner. If the holder of any ownership
24 interest in the land is other than an individual, such as a corporation,
25 partnership or trust, a statement naming the type of legal entity and listing
26 the interest and the extent of any interest of each principal in the
27 entity. For the purposes of this section, "principal" means any person or
28 entity having a ten per cent or more financial interest or, if the legal
29 entity is a trust, each beneficiary of the trust holding a ten per cent or
30 more beneficial interest.

31 2. The name and address of the subdivider.

32 3. The legal description and area of the land.

33 4. A true statement of the condition of the title to the land,
34 including all encumbrances on the land, and a statement of the provisions
35 agreed to by the holder of any blanket encumbrance enabling a purchaser to
36 acquire title to a lot or parcel free of the lien of the blanket encumbrance
37 on completion of all payments and performance of all of the terms and
38 provisions required to be made or performed by the purchaser under the real
39 estate sales contract by which the purchaser has acquired the lot or parcel.
40 The subdivider shall file copies of documents acceptable to the department
41 containing these provisions with the commissioner before the sale of any
42 subdivision lot or parcel subject to a blanket encumbrance.

43 5. The terms and conditions on which it is intended to dispose of the
44 land, together with copies of any real estate sales contract, conveyance,

1 lease, assignment or other instrument intended to be used, and any other
2 information the owner or the owner's agent or subdivider desires to present.

3 6. A map of the subdivision which has been filed in the office of the
4 county recorder in the county in which the subdivision is located.

5 7. A brief but comprehensive statement describing the land on and the
6 locality in which the subdivision is located.

7 8. A statement of the provisions that have been made for permanent
8 access and provisions, if any, for health department approved sewage and
9 solid waste collection and disposal and public utilities in the proposed
10 subdivision, including water, electricity, gas and telephone facilities.

11 9. A statement as to the location of the nearest public common and
12 high schools available for the attendance of school age pupils residing on
13 the subdivision property.

14 10. A statement of the use or uses for which the proposed subdivision
15 will be offered.

16 11. A statement of the provisions, if any, limiting the use or
17 occupancy of the parcels in the subdivision, together with copies of any
18 restrictive covenants affecting all or part of the subdivision.

19 12. The name and business address of the principal broker selling or
20 leasing, within this state, lots or parcels in the subdivision.

21 13. A true statement of the approximate amount of indebtedness which
22 is a lien on the subdivision or any part of the subdivision and which was
23 incurred to pay for the construction of any on-site or off-site improvement,
24 or any community or recreational facility.

25 14. A true statement or reasonable estimate, if applicable, of the
26 amount of any indebtedness which has been or is proposed to be incurred by
27 an existing or proposed special district, entity, taxing area or assessment
28 district, within the boundaries of which the subdivision, or any part of the
29 subdivision, is located, and which is to pay for the construction or
30 installation of any improvement or to furnish community or recreational
31 facilities to the subdivision, and which amounts are to be obtained by ad
32 valorem tax or assessment, or by a special assessment or tax upon the
33 subdivision or any part of the subdivision.

34 15. A true statement as to the approximate amount of annual taxes,
35 special assessments or fees to be paid by the buyer for the proposed annual
36 maintenance of common facilities in the subdivision.

37 16. A statement of the provisions for easements for permanent access
38 for irrigation water where applicable.

39 17. A true statement of assurances for the completion of off-site
40 improvements, such as roads, utilities, community or recreational facilities
41 and other improvements to be included in the offering or represented as being
42 in the offering, and approval of the offering by the political subdivision
43 with authority. This statement shall include a trust agreement or ANY other
44 evidence of assurances for delivery of the improvements and a statement of
45 the provisions, if any, for the continued maintenance of the improvements.

1 18. A true statement of the nature of any improvements to be installed
2 by the subdivider, the estimated schedule for completion and the estimated
3 costs related to the improvements which will be borne by purchasers of lots
4 in the subdivision.

5 19. A true statement of the availability of sewage disposal facilities
6 and other public utilities including water, electricity, gas and telephone
7 facilities in the subdivision, the estimated schedule for their installation,
8 and the estimated costs related to the facilities and utilities which will
9 be borne by purchasers of lots in the subdivision.

10 20. A true statement as to whether all or any portion of the
11 subdivision is located in an open range or area in which livestock may roam
12 at large under the laws of this state and what provisions, if any, have been
13 made for the fencing of the subdivision to preclude livestock from roaming
14 within the subdivided lands.

15 21. If the subdivider is a subsidiary corporation, a true statement
16 identifying the parent corporation and any of the following in which the
17 parent or any of its subsidiaries ~~are~~ IS or ~~have~~ HAS been involved within the
18 past five years:

19 (a) Any subdivision in this state.

20 (b) Any subdivision, wherever located, for which registration is
21 required pursuant to the federal interstate land sales full disclosure act.

22 (c) Any subdivision, wherever located, for which registration would
23 have been required pursuant to the federal interstate land sales full
24 disclosure act but for the exemption for subdivisions whose lots are all
25 twenty acres or more in size.

26 22. A true statement identifying all other subdivisions, designated in
27 paragraph 21 OF THIS SUBSECTION, in which any of the following ~~are~~ IS or,
28 within the last five years, ~~have~~ HAS been directly or indirectly involved:

29 (a) The holder of any ownership interest in the land.

30 (b) The subdivider.

31 (c) Any principal or officer in the holder or subdivider.

32 23. A true statement as to whether all or any portion of the
33 subdivision is located in territory in the vicinity of a military airport OR
34 ANCILLARY MILITARY FACILITY as defined in section 28-8461, in territory in
35 the vicinity of a public airport as defined in section 28-8486 or, on or
36 after July 1, 2001, in a high noise or accident potential zone as defined in
37 section 28-8461 OR ON OR AFTER JULY 1 OF THE YEAR IN WHICH THE SUBDIVISION
38 BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE. The statement
39 required pursuant to this paragraph does not require the amendment or
40 refileing of any notice filed before July 1, 2001 OR BEFORE JULY 1 OF THE YEAR
41 IN WHICH THE SUBDIVISION BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT
42 POTENTIAL ZONE.

1 24. If the subdivision is a conversion from multifamily rental to
2 condominiums as defined in section 33-1202, a true statement as to the
3 following:

4 (a) That the property is a conversion from multifamily rental to
5 condominiums.

6 (b) The date original construction was completed.

7 25. Other information and documents and certifications as the
8 commissioner may reasonably require.

9 B. The commissioner, upon application, may grant a subdivider of lots
10 or parcels within a subdivision for which a public report was previously
11 issued by the commissioner an exemption from all or part of the notification
12 requirements of subsection A of this section. The subdivider shall file a
13 statement with the commissioner indicating the change of ownership in the
14 lots or parcels together with any material changes occurring subsequent to
15 the original approval of the subdivision within which the lots or parcels are
16 located. The statement shall further refer to the original approval by the
17 commissioner.

18 C. If the subdivision is within a groundwater active management area,
19 as defined in section 45-402, the subdivider shall accompany the notice with
20 a certificate of assured water supply issued by the director of water
21 resources, unless the subdivider has obtained a written commitment of water
22 service for the subdivision from a city, town or private water company
23 designated as having an assured water supply by the director of water
24 resources pursuant to section 45-576 or is exempt from the requirement
25 pursuant to section 45-576. If the subdivider has submitted a certificate
26 of assured water supply to a city, town or county prior to approval of the
27 plat by the city, town or county and this has been noted on the face of the
28 plat, the submission constitutes compliance with this subsection.

29 D. It is unlawful for a person or group of persons acting in concert
30 to attempt to avoid the provisions of this article by acting in concert to
31 divide a parcel of land or sell subdivision lots by using a series of owners
32 or conveyances or by any other method which ultimately results in the
33 division of the lands into a subdivision or the sale of subdivided land. The
34 plan or offering is subject to the provisions of this article. Unlawful
35 acting in concert pursuant to this subsection with respect to the sale or
36 lease of subdivision lots requires proof that the real estate licensee or
37 other licensed professional knew or with the exercise of reasonable diligence
38 should have known that property which the licensee listed or for which the
39 licensee acted in any capacity as agent was subdivided land subject to the
40 provisions of this article.

41 E. A creation of six or more lots, parcels or fractional interests in
42 improved or unimproved land, lots or parcels of any size is subject to the
43 provisions of this article except when:

44 1. Each of the lots, parcels or fractional interests represents, on
45 a partition basis, thirty-six acres or more in area of land located in this

1 state including to the ~~center line~~ CENTERLINE of dedicated roads or
2 easements, if any, contiguous to the land in which the interests are held.

3 2. The lots, parcels or fractional interests are the result of a
4 foreclosure sale, the exercise by a trustee under a deed of trust of a power
5 of sale or the grant of a deed in lieu of foreclosure. This paragraph does
6 not allow circumvention of the requirements of this article.

7 3. The lots, parcels or fractional interests are created by a valid
8 order or decree of a court pursuant to and through compliance with title 12,
9 chapter 8, article 7 or by operation of law. This paragraph does not allow
10 circumvention of the requirements of this article.

11 4. The lots, parcels or fractional interests consist of interests in
12 any oil, gas or mineral lease, permit, claim or right therein and such
13 interests are regulated as securities by the United States or by this state.

14 5. The lots, parcels or fractional interests are registered as
15 securities under the laws of the United States or the laws of this state or
16 are exempt transactions under the provisions of section 44-1844, 44-1845 or
17 44-1846.

18 6. The commissioner by special order exempts offerings or
19 dispositions of any lots, parcels or fractional interests from compliance
20 with the provisions of this article upon written petition and upon a showing
21 satisfactory to the commissioner that compliance is not essential to the
22 public interest or for the protection of buyers.

23 F. In areas outside of groundwater active management areas
24 established pursuant to title 45, chapter 2, article 2, if the director of
25 water resources, pursuant to section 45-108, reports an inadequate on-site
26 supply of water to meet the needs projected by the developer or if no water
27 is available, the state real estate commissioner shall require that all
28 promotional material and contracts for the sale of lots in subdivisions
29 approved by the commissioner adequately display the director of water
30 resources' report or the developer's brief summary of the report as approved
31 by the commissioner on the proposed water supply for the subdivision.

32 G. The commissioner may require the subdivider to supplement the
33 notice of intention to subdivide lands and may require the filing of periodic
34 reports to update the information contained in the original notice of
35 intention to subdivide lands.

36 H. The commissioner may authorize the subdivider to file as the
37 notice of intention to subdivide lands, in lieu of some or all of the
38 requirements of subsection A of this section, a copy of the statement of
39 record filed with respect to the subdivision pursuant to the federal
40 interstate land sales full disclosure act if the statement complies with the
41 requirements of the act and the regulations pertinent to the act.

42 I. Neither a real estate sales contract, conveyance, lease,
43 assignment or other instrument to transfer any interest in subdivided land
44 nor any covenant or restriction affecting real property shall contain any
45 provision limiting the right of any party to appear or testify in support of

1 or opposition to zoning changes, building permits or any other official acts
2 affecting real property before a governmental body or official considering
3 zoning changes, building permits or any other official acts affecting real
4 property, whether the property is located within or outside of the boundaries
5 of the subdivision. All contractual provisions which conflict with this
6 subsection are declared to be contrary to public policy. Nothing contained
7 in this subsection shall prohibit private restrictions on the use of any real
8 property.

9 J. Before offering subdivided lands for lease or sale the subdivider
10 who makes any promises through any form of advertising media that the
11 subdivided lands will be exclusively a retirement community or one which is
12 limited to the residency of adults or senior citizens shall include the
13 promises in the deed restrictions affecting any interest in real property
14 within the subdivided lands.

15 Sec. 15. Section 32-2183, Arizona Revised Statutes, is amended to
16 read:

17 32-2183. Subdivision public reports; denial of issuance;
18 unlawful sales; voidable sale or lease; order
19 prohibiting sale or lease; investigations; hearings;
20 summary orders

21 A. Upon examination of a subdivision, the commissioner ~~shall~~, unless
22 there are grounds for denial, SHALL issue to the subdivider a public report
23 authorizing the sale or lease in this state of the lots, parcels or
24 fractional interests within the subdivision. The report shall contain the
25 data obtained in accordance with section 32-2181 and any other information
26 which the commissioner determines is necessary to implement the purposes of
27 this article. If any of the lots, parcels or fractional interests within the
28 subdivision are located within territory in the vicinity of a military
29 airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the
30 report shall include, in bold twelve point font block letters on the first
31 page of the report, the statements required pursuant to section 28-8484,
32 subsection A and, if the department has been provided a map prepared pursuant
33 to section 28-8484, subsection B, the report shall include a copy of the
34 map. These report requirements do not require the amendment or reissuance
35 of any public report issued on or before December 31, 2001 OR ON OR BEFORE
36 DECEMBER 31 OF THE YEAR IN WHICH THE LOTS, PARCELS OR FRACTIONAL INTERESTS
37 WITHIN A SUBDIVISION BECOME TERRITORY IN THE VICINITY OF A MILITARY AIRPORT
38 OR ANCILLARY MILITARY FACILITY. The commissioner shall require the
39 subdivider to reproduce the report, make the report available to each
40 prospective customer and furnish each buyer or lessee with a copy before the
41 buyer or lessee signs any offer to purchase or lease, taking a receipt
42 therefor.

43 B. Notwithstanding subsection A of this section, a subdivider may
44 elect to prepare a final public report for use in the sale of improved lots
45 as defined in section 32-2101, as follows:

1 1. The subdivider shall prepare the public report and provide a copy
2 of the report to the commissioner with the submission of the notification
3 required by sections 32-2181 and 32-2184 and shall comply with all other
4 requirements of this article.

5 2. An initial filing fee of five hundred dollars or an amended filing
6 fee of two hundred fifty dollars shall accompany the notification required
7 by paragraph 1 of this subsection.

8 3. The department shall assign a registration number to each
9 notification and public report submitted pursuant to this subsection and
10 shall maintain a ~~data-base~~ DATABASE of all of these submissions. The
11 subdivider shall place the number on each public report.

12 4. The department shall determine within fifteen business days after
13 the receipt of the notification and public report whether the notification
14 and public report are administratively complete. The commissioner ~~may~~ either
15 MAY issue a certification that the notification and public report are
16 administratively complete or may deny issuance of the certification if it
17 appears that the application or project is not in compliance with all legal
18 requirements, that the applicant has a background of violations of state or
19 federal law or that the applicant or project presents an unnecessary risk of
20 harm to the public.

21 5. A subdivider may commence sales or leasing activities as permitted
22 under this article after obtaining a certificate of administrative
23 completeness from the commissioner.

24 6. Before or after the commissioner issues a certificate of
25 administrative completeness, the department may examine any public report,
26 subdivision or applicant that has applied for or received the certificate.
27 If the commissioner determines that the subdivider or subdivision is not in
28 compliance with any requirement of state law or that grounds exist under this
29 chapter to suspend, deny or revoke a public report, the commissioner may
30 commence an administrative action under section 32-2154 or 32-2157. If the
31 subdivider immediately corrects the deficiency and comes into full compliance
32 with state law, the commissioner shall vacate any action that the
33 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

34 7. The department shall provide forms and guidelines for the
35 submission of the notification and public report pursuant to this section.

36 C. The commissioner may suspend, revoke or deny issuance of a public
37 report on any of the following grounds:

38 1. Failure to comply with any of the provisions of this article or
39 the rules of the commissioner pertaining to this article.

40 2. The sale or lease would constitute misrepresentation to or deceit
41 or fraud of the purchasers or lessees.

42 3. Inability to deliver title or other interest contracted for.

43 4. Inability to demonstrate that adequate financial or other
44 arrangements acceptable to the commissioner have been made for completion of
45 all streets, sewers, electric, gas and water utilities, drainage and flood

1 control facilities, community and recreational facilities and other
2 improvements included in the offering.

3 5. Failure to make a showing that the lots, parcels or fractional
4 interests can be used for the purpose for which they are offered.

5 6. The owner, agent, subdivider, officer, director or partner,
6 subdivider trust beneficiary holding ten per cent or more direct or indirect
7 beneficial interest or, if a corporation, any stockholder owning ten per cent
8 or more of the stock in the corporation has:

9 (a) Been convicted of a felony or misdemeanor involving fraud or
10 dishonesty or involving conduct of any business or a transaction in real
11 estate, cemetery property, time-share intervals or membership camping
12 campgrounds or contracts.

13 (b) Been permanently or temporarily enjoined by order, judgment or
14 decree from engaging in or continuing any conduct or practice in connection
15 with the sale or purchase of real estate or cemetery property, time-share
16 intervals, membership camping contracts or campgrounds, or securities or
17 involving consumer fraud or the racketeering laws of this state.

18 (c) Had an administrative order entered against him by a real estate
19 regulatory agency or security regulatory agency.

20 (d) Had an adverse decision or judgment entered against him involving
21 fraud or dishonesty or involving the conduct of any business or transaction
22 in real estate, cemetery property, time-share intervals or membership camping
23 campgrounds or contracts.

24 (e) Disregarded or violated any of the provisions of this chapter or
25 the rules of the commissioner pertaining to this chapter.

26 (f) Controlled an entity to which subdivision (b), (c), (d) or (e)
27 applies.

28 7. Procurement or an attempt to procure a public report by fraud,
29 misrepresentation or deceit or by filing an application for a public report
30 which is materially false or misleading.

31 8. Failure of the declaration for a condominium created pursuant to
32 title 33, chapter 9, article 2 to comply with the requirements of section
33 33-1215 or failure of the plat for the condominium to comply with the
34 requirements of section 33-1219. The commissioner may require an applicant
35 for a public report to submit a notarized statement signed by the subdivider
36 or an engineer or attorney licensed to practice in this state certifying that
37 the condominium plat and declaration of condominium are in compliance with
38 the requirements of sections 33-1215 and 33-1219. If the notarized statement
39 is provided, the commissioner is entitled to rely on this statement.

40 9. Failure of any blanket encumbrance or valid supplementary
41 agreement executed by the holder of the blanket encumbrance to contain
42 provisions that enable the purchaser to acquire title to a lot or parcel free
43 of the lien of the blanket encumbrance, on completion of all payments and
44 performance of all of the terms and provisions required to be made or
45 performed by the purchaser under the real estate sales contract by which the

1 purchaser has acquired the lot or parcel. The subdivider shall file copies
2 of documents acceptable to the commissioner containing these provisions with
3 the commissioner before the sale of any subdivision lot or parcel subject to
4 a blanket encumbrance.

5 10. Failure to demonstrate permanent access to the subdivision lots or
6 parcels.

7 11. The use of the lots presents an unreasonable health risk.

8 D. It is unlawful for a subdivider to sell any lot in a subdivision
9 unless one of the following occurs:

10 1. All proposed or promised subdivision improvements are completed.

11 2. The completion of all proposed or promised subdivision
12 improvements is assured by financial arrangements acceptable to the
13 commissioner. The financial arrangements may be made in phases for common
14 community and recreation facilities required by a municipality or county as
15 a stipulation for approval of a plan for a master planned community.

16 3. The municipal or county government agrees to prohibit occupancy
17 and the subdivider agrees not to close escrow for lots in the subdivision
18 until all proposed or promised subdivision improvements are completed.

19 4. The municipal or county government enters into an assurance
20 agreement with any trustee not to convey lots until improvements are
21 completed within the portion of the subdivision containing these lots, if the
22 improvements can be used and maintained separately from the improvements
23 required for the entire subdivision plat. The agreement shall be recorded
24 in the county in which the subdivision is located.

25 E. If the subdivision is within a groundwater active management area,
26 as defined in section 45-402, the commissioner shall deny issuance of a
27 public report or the use of any exemption pursuant to section 32-2181.02,
28 subsection B unless the subdivider has been issued a certificate of assured
29 water supply by the director of water resources, or unless the subdivider has
30 obtained a written commitment of water service for the subdivision from a
31 city, town or private water company designated as having an assured water
32 supply by the director of water resources pursuant to section 45-576 or is
33 exempt from the requirement pursuant to section 45-576.

34 F. No A subdivider shall NOT sell or lease or offer for sale or lease
35 in this state any lots, parcels or fractional interests in a subdivision
36 without first obtaining a public report from the commissioner except as
37 provided in section 32-2181.01 or 32-2181.02. Unless exempt, the sale or
38 lease of subdivided lands prior to issuance of the public report or failure
39 to deliver the public report to the purchaser or lessee shall render the sale
40 or lease rescindable by the purchaser or lessee. An action by the purchaser
41 or lessee to rescind the transaction shall be brought within three years of
42 the date of execution of the purchase or lease agreement by the purchaser or
43 lessee. In any rescission action, the prevailing party is entitled to
44 reasonable attorney fees as determined by the court.

1 G. Any applicant objecting to the denial of a public report may,
2 within thirty days after receipt of the order of denial, MAY file a written
3 request for a hearing. The commissioner shall hold the hearing within twenty
4 days after receipt of the request for a hearing unless the party requesting
5 the hearing has requested a postponement. If the hearing is not held within
6 twenty days after a request for a hearing is received, plus the period of any
7 postponement, or if a proposed decision is not rendered within forty-five
8 days after submission, the order of denial shall be rescinded and a public
9 report issued.

10 H. On the commissioner's own motion, or when the commissioner has
11 received a complaint and has satisfactory evidence that the subdivider or the
12 subdivider's agent is violating any provision set forth in this article or
13 the rules of the commissioner or has engaged in any unlawful practice as
14 defined in section 44-1522 with respect to the sale of subdivided lands or
15 deviated from the provisions of the public report, THE COMMISSIONER may
16 investigate the subdivision project and examine the books and records of the
17 subdivider. For the purpose of examination, the subdivider shall keep and
18 maintain records of all sales transactions and funds received by the
19 subdivider pursuant to the sales transactions and shall make them accessible
20 to the commissioner upon reasonable notice and demand.

21 I. On the commissioner's own motion, or when the commissioner has
22 received a complaint and has satisfactory evidence that any person has
23 violated any of the provisions of this article or the rules of the
24 commissioner or has engaged in any unlawful practice as defined in section
25 44-1522 with respect to the sale of subdivided lands or deviated from the
26 provisions of the public report or special order of exemption, or has been
27 indicted for fraud or against whom an information for fraud has been filed
28 or has been convicted of a felony, before or after the commissioner issues
29 the public report as provided in subsection A of this section, THE
30 COMMISSIONER may conduct an investigation of the matter, issue a summary
31 order as provided in section 32-2157, or hold a public hearing and, after the
32 hearing, may issue the order or orders the commissioner deems necessary to
33 protect the public interest and ~~insure~~ ENSURE compliance with the law, rules
34 or public report or the commissioner may bring action in any court of
35 competent jurisdiction against the person to enjoin the person from
36 continuing the violation or engaging in or doing any act or acts in
37 furtherance of the violation. The court may make orders or judgments,
38 including the appointment of a receiver, necessary to prevent the use or
39 employment by a person of any unlawful practices, or which may be necessary
40 to restore to any person in interest any monies or property, real or
41 personal, that may have been acquired by means of any practice in this
42 article declared to be unlawful.

1 J. When it appears to the commissioner that a person has engaged in
2 or is engaging in a practice declared to be unlawful by this article and that
3 the person is concealing assets or self or has made arrangements to conceal
4 assets or is about to leave the state, the commissioner may apply to the
5 superior court, ex parte, for an order appointing a receiver of the assets
6 of the person or for a writ of ne exeat, or both.

7 K. The court upon receipt of an application for the appointment of a
8 receiver or for a writ of ne exeat, or both, shall examine the verified
9 application of the commissioner and other evidence that the commissioner may
10 present the court. If satisfied that the interests of the public require the
11 appointment of a receiver or the issuance of a writ of ne exeat without
12 notice, the court shall issue an order appointing the receiver or issue the
13 writ, or both. If the court determines that the interests of the public will
14 not be harmed by the giving of notice, the court shall set a time for a
15 hearing and require notice be given as the court deems satisfactory.

16 L. If the court appoints a receiver without notice, the court shall
17 further direct that a copy of the order appointing a receiver be served upon
18 the person engaged in or engaging in a practice declared to be unlawful under
19 this article by delivering the order to the last address of the person which
20 is on file with the STATE real estate department. The order shall inform the
21 person that the person has the right to request a hearing within ten days of
22 the date of the order and, if requested, the hearing shall be held within
23 thirty days from the date of the order.

24 Sec. 16. Section 32-2195, Arizona Revised Statutes, is amended to
25 read:

26 32-2195. Notice to commissioner of intention before offering for
27 sale or lease of unsubdivided land; definition

28 A. Prior to the offering for sale or lease of unsubdivided land the
29 owner or agent shall notify the commissioner in writing of the owner's or
30 agent's intention to offer such parcels for sale or lease.

31 B. The notice required by this section shall contain the following
32 information:

33 1. The name and address of the owner. If the holder of any ownership
34 interest in the land is other than an individual, such as a corporation,
35 partnership or trust, a statement naming the type of legal entity and listing
36 the interest and the extent of such interest of each principal in the entity.
37 For the purposes of this section, "principal" means any person or entity
38 having a ten per cent or more financial interest or, if the legal entity is
39 a trust, each beneficiary of the trust holding a ten per cent or more
40 beneficial interest.

41 2. The name and address of the agent.

- 1 3. The legal description and area of the lands.
- 2 4. A true statement of the condition of the title to the land,
- 3 including all encumbrances thereon.
- 4 5. A true statement of the terms and conditions under which such
- 5 lands are to be offered to the public.
- 6 6. A statement of the use or uses for which the land will be offered
- 7 or a statement that it is offered for no specific use.
- 8 7. A true statement of the provisions made for permanent access.
- 9 8. A true statement setting out the availability of water or lack
- 10 thereof.
- 11 9. A true statement of the availability to the land of sewage
- 12 disposal facilities and other public utilities including water, electricity,
- 13 gas and telephone facilities.
- 14 10. A true statement or reasonable estimate, if applicable, of the
- 15 amount of any indebtedness which has been or is proposed to be incurred by
- 16 an existing or proposed special district, taxing area or assessment district
- 17 within the boundaries of which the unsubdivided lands are located, and which
- 18 is to pay for the construction or installation of any improvements to that
- 19 land.
- 20 11. A true statement as to whether all or any portion of the
- 21 unsubdivided land is located in an open range or area in which livestock may
- 22 roam at large under the laws of this state and what provisions, if any, have
- 23 been made for the fencing of the unsubdivided land to preclude livestock from
- 24 roaming within such land.
- 25 12. If the owner or agent is a subsidiary corporation, a true
- 26 statement identifying the parent corporation and any of the following in
- 27 which the parent or any of its subsidiaries are or have been involved within
- 28 the past five years:
- 29 (a) Any subdivision in this state.
- 30 (b) Any subdivision, wherever located, for which registration is
- 31 required pursuant to the federal interstate land sales full disclosure act.
- 32 (c) Any subdivision, wherever located, for which registration would
- 33 have been required pursuant to the federal interstate land sales full
- 34 disclosure act but for the exemption for subdivisions whose lots are five
- 35 acres or more in size.
- 36 13. A true statement identifying all other subdivisions, designated in
- 37 paragraph 12, in which any of the following are or, within the last five
- 38 years, have been directly or indirectly involved:
- 39 (a) The holder of any ownership interest in the land.
- 40 (b) The agent.
- 41 (c) Any principal or officer in the holder.
- 42 14. A true statement as to whether all or any portion of the
- 43 unsubdivided land is located in territory in the vicinity of a military
- 44 airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, in
- 45 territory in the vicinity of a public airport as defined in section 28-8486

1 or, on or after July 1, 2001, in a high noise or accident potential zone as
2 defined in section 28-8461 OR ON OR AFTER JULY 1 OF THE YEAR IN WHICH THE
3 LAND BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE. The
4 statement required pursuant to this paragraph does not require the amendment
5 or refiling of any notice filed before July 1, 2001 OR BEFORE JULY 1 OF THE
6 YEAR IN WHICH THE LAND BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL
7 ZONE.

8 15. Such other information and such other documents and certifications
9 as the commissioner may reasonably require for the protection of the public.

10 C. Copies of original promotional and advertising material to be used
11 with such offering shall be attached to the notice.

12 D. It shall be unlawful for any owner or agent to make any offerings
13 regulated by this section without the written authorization of the
14 commissioner. The commissioner shall issue a public report thereon and
15 require a copy of the public report to be furnished to each offeree at the
16 time of such offering.

17 E. It shall be unlawful to offer any lands regulated by this article
18 without provisions having been made for permanent access over terrain on
19 which roads could be established for conventional motor vehicles unless such
20 provision is waived by the commissioner.

21 F. Satisfactory proof or evidence that access meets the requirements
22 of subsection E of this section shall be furnished to the department in a
23 report by a licensed engineer or land surveyor of this state.

24 G. The commissioner may terminate any authorization issued upon the
25 grounds and in the manner set out in section 32-2183.

26 H. If the director of water resources has issued a water availability
27 report, the state real estate commissioner shall require that all promotional
28 material and contracts for the sale of such unsubdivided lands adequately
29 display the director of water resources' report or a brief summary of the
30 results prepared by the developer and approved by the real estate
31 commissioner. If no report has been prepared by the director of water
32 resources and the availability of water is unknown, the real estate
33 commissioner shall require that all promotional material and contracts
34 adequately display that no report has been prepared and that the availability
35 of water is unknown.

36 I. Neither any real estate sales contract, conveyance, lease,
37 assignment or other instrument to transfer any interest in unsubdivided land
38 nor any covenant or restriction affecting real property shall contain any
39 provision limiting the right of any party to appear or testify in support of
40 or opposition to zoning changes, building permits or any other official acts
41 affecting real property before a governmental body or official considering
42 zoning changes, building permits or any other official acts affecting real
43 property, whether such property is located within or outside of the
44 boundaries of the unsubdivided land. All contractual provisions which
45 conflict with this subsection are declared to be contrary to public policy.

1 Nothing contained in this subsection shall prohibit private restrictions on
2 the use of any real property.

3 Sec. 17. Section 32-2195.03, Arizona Revised Statutes, is amended to
4 read:

5 32-2195.03. Unsubdivided land reports; denial of issuance; order
6 prohibiting sale or lease; investigations;
7 hearings; summary orders

8 A. Upon examination of unsubdivided land, the commissioner shall,
9 unless there are grounds for denial, SHALL prepare and issue to the owner or
10 agent a public report authorizing the sale or lease of the unsubdivided lands
11 in this state. The report shall contain the data obtained in accordance with
12 section 32-2195 and any other information which the commissioner determines
13 is necessary to implement the purposes of this article. If any of the
14 unsubdivided land is located within territory in the vicinity of a military
15 airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the
16 report shall include, in bold twelve point font block letters on the first
17 page of the report, the statements required pursuant to section 28-8484,
18 subsection A and, if the department has been provided a map prepared pursuant
19 to section 28-8484, subsection B, the report shall include a copy of the
20 map. These report requirements do not require the amendment or reissuance
21 of any public report issued on or before December 31, 2001 OR ON OR AFTER
22 DECEMBER 31 OF THE YEAR IN WHICH THE UNSUBDIVIDED LAND BECOMES TERRITORY IN
23 THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY. The
24 commissioner shall require the owner or agent to reproduce the report and
25 furnish each prospective buyer with a copy before the buyer signs an offer
26 to purchase, taking a receipt therefor.

27 B. Notwithstanding any provision of subsection A of this section, an
28 owner may prepare a final public report for use in the sale of unsubdivided
29 lands as defined in section 32-2101, as follows:

30 1. The owner shall prepare the public report and provide a copy of
31 the report to the commissioner with the submission of the notification
32 required by sections 32-2195 and 32-2195.10 and shall comply with all other
33 requirements of this article.

34 2. An initial filing fee of five hundred dollars or an amended filing
35 fee of two hundred fifty dollars shall accompany the notification required
36 by paragraph 1 of this subsection.

37 3. The department shall assign a registration number to each
38 notification and public report submitted pursuant to this subsection and
39 shall maintain a ~~data base~~ DATABASE of all of these submissions. The owner
40 shall place the number on each public report.

41 4. The department shall determine within fifteen business days after
42 the receipt of the notification and public report whether the notification
43 and public report are administratively complete. The commissioner may either
44 issue a certification that the notification and public report are
45 administratively complete or may deny issuance of the certification if it

1 appears that the application or project is not in compliance with all legal
2 requirements, that the applicant has a background of violations of state or
3 federal law or that the applicant or project presents an unnecessary risk of
4 harm to the public.

5 5. An owner may commence sales or leasing activities as permitted
6 under this article after obtaining a certificate of administrative
7 completeness from the commissioner.

8 6. Before or after the commissioner issues a certificate of
9 administrative completeness, the department may examine any public report,
10 development or applicant that has applied for or received the certificate.
11 If the commissioner determines that the owner or development is not in
12 compliance with any requirement of state law or that grounds exist under this
13 chapter to suspend, deny or revoke a public report, the commissioner may
14 commence an administrative action under section 32-2154 or 32-2157. If the
15 owner immediately corrects the deficiency and comes into full compliance with
16 state law, the commissioner shall vacate any action that he may have
17 commenced pursuant to section 32-2154 or 32-2157.

18 7. The department shall provide forms and guidelines for the
19 submission of the notification and public report pursuant to this section.

20 C. The commissioner may deny issuance of a public report on any of
21 the following grounds:

22 1. Failure to comply with any of the provisions of this article or
23 the rules of the commissioner pertaining to this article.

24 2. The sale or lease would constitute misrepresentation to or deceit
25 or fraud of the purchasers or lessees.

26 3. Inability to deliver title or other interest contracted for.

27 4. Inability to demonstrate that adequate financial or other
28 arrangements acceptable to the commissioner have been made for installation
29 of all streets, sewers, electric, gas and water utilities, drainage, flood
30 control and other similar improvements included in the offering.

31 5. Failure to make a showing that the parcels can be used for the
32 purpose for which they are offered.

33 6. Failure to provide in the contract or other writing the use or
34 uses, if any, for which the parcels are offered, together with any covenants
35 or conditions relative to the parcel.

36 7. Failure to demonstrate that adequate financial arrangements have
37 been made for any guaranty or warranty included in the offering.

38 8. The owner or agent, officer, director or partner or trust
39 beneficiary holding a ten per cent or more beneficial interest, or, if a
40 corporation, any stockholder owning ten per cent or more of the stock in the
41 corporation has:

42 (a) Been convicted of a felony or misdemeanor involving fraud or
43 dishonesty or involving conduct of any business or a transaction in real
44 estate, cemetery property, time-share intervals or membership camping
45 campgrounds or contracts.

1 (b) Been permanently or temporarily enjoined by order, judgment
2 decree from engaging in or continuing any conduct or practice in connec
3 with the sale or purchase of real estate or cemetery property, time-sh
4 intervals, membership camping contracts or campgrounds, or securities
5 involving consumer fraud or the racketeering laws of this state.

6 (c) Had an administrative order entered against him by a real est
7 regulatory agency or security regulatory agency.

8 (d) Had an adverse decision or judgment entered against him involv
9 fraud or dishonesty or involving the conduct of any business in or
10 transaction in real estate, cemetery property, time-share intervals
11 membership camping campgrounds or contracts.

12 (e) Disregarded or violated any of the provisions of this chapter
13 the rules of the commissioner pertaining to this chapter.

14 (f) Participated in, operated or held an interest in any entity
15 which subdivision (b), (c), (d) or (e) applies.

16 D. No owner or agent may sell or lease or offer for sale or leas
17 unsubdivided lands without first obtaining a public report from th
18 commissioner. Any sale or lease of unsubdivided lands prior to issuance o
19 the public report shall be voidable by the purchaser. An action by th
20 purchaser to void the transaction shall be brought within three years of th
21 date of execution of the purchase agreement by the purchaser. In any
22 avoidance action the prevailing party is entitled to reasonable attorney fees
23 as determined by the court.

24 E. Any applicant objecting to the denial of a public report may,
25 within thirty days after receipt of the order of denial, MAY file a written
26 request for a hearing. The commissioner shall hold the hearing within twenty
27 days after receipt of the request for a hearing unless the party requesting
28 the hearing requests a postponement. If the hearing is not held within
29 twenty days after a request for a hearing is received plus the period of any
30 postponement, or if a proposed decision is not rendered within forty-five
31 days after submission, the order of denial shall be rescinded and a public
32 report issued.

33 F. On the commissioner's own motion, or when the commissioner has
34 received a complaint and has satisfactory evidence that the owner or agent
35 is violating any provision set forth in this article or the rules of the
36 commissioner or has engaged in any unlawful practice as defined in section
37 44-1522 with respect to the sale of unsubdivided lands or deviated from the
38 provisions of the public report, THE COMMISSIONER may investigate the
39 subdivision project and examine the books and records of the owner or
40 agent. For the purpose of examination, the owner or agent shall keep and
41 maintain records of all sales transactions and funds received by the owner
42 or agent pursuant to the sales transactions and shall make them accessible
43 to the commissioner upon reasonable notice and demand.

44 G. On the commissioner's own motion, or when the commissioner has
45 received a complaint and has satisfactory evidence that grounds exist as

1 provided in subsection C of this section or that any person has engaged in
2 any unlawful practice as defined in section 44-1522 with respect to the sale
3 of unsubdivided lands or deviated from the provisions of the public report,
4 THE COMMISSIONER may conduct an investigation of the matter, issue a summary
5 order as provided in section 32-2157, or hold a public hearing and, after the
6 hearing, may issue the order or orders the commissioner deems necessary to
7 protect the public interest and ~~insure~~ ENSURE compliance with the law, rules
8 or public report. If, after the hearing, the violation of the law, rules or
9 public report continues, the commissioner may bring an action in any court
10 of competent jurisdiction against the person to enjoin the person from
11 continuing the violation or engaging in or doing any act or acts in
12 furtherance of the violation.

13 Sec. 18. Section 37-102, Arizona Revised Statutes, is amended to read:

14 37-102. State land department; powers and duties

15 A. The state land department shall administer all laws relating to
16 lands owned by, belonging to, and under the control of the state.

17 B. The department shall have charge and control of all lands owned by
18 the state, and timber, stone, gravel and other products of such lands, except
19 lands under the specific use and control of state institutions and the
20 products of such lands.

21 C. The department may, in the name of the state, MAY commence,
22 prosecute and defend all actions and proceedings to protect the interest of
23 the state in lands within the state or the proceeds thereof. Actions shall
24 be commenced and prosecuted at the request of the department by the attorney
25 general, a county attorney, or a special counsel under the direction of the
26 attorney general.

27 D. The department shall be the official representative of the state
28 in any communication between the state and the United States government in
29 all matters respecting state lands or any interest of the state in or to the
30 public lands within the state.

31 E. The summons in any action against the state respecting any lands
32 of the state or the products of such lands and all notices concerning such
33 lands or products shall be served upon the commissioner. Summonses, warrants
34 or legal notices served on behalf of the department may be served by the
35 commissioner or ~~his~~ THE COMMISSIONER'S deputy, or by the sheriff or
36 constable of any county of the state.

37 F. The department shall maintain as a public record in each of its
38 offices a public docket and index of all matters before the department which
39 may be subject to appeal to the board of appeals or to the courts and all
40 sale, exchange and lease transactions subject to bidding by the public. The
41 department shall list a matter on the public docket immediately after a
42 application or other request for department action is received by the
43 department. The department shall include in the public docket every formal
44 action and decision affecting each matter in question. The department shall

1 establish by rule a means by which any person may obtain a copy of the public
2 docket at the current copying cost.

3 G. The department shall reappraise or update its original appraisal
4 of property to be leased, exchanged or sold if the board of appeals' approval
5 of the lease or sale occurred more than one hundred eighty days before the
6 auction.

7 H. WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO
8 THIS SECTION, THE STATE LAND DEPARTMENT SHALL MAKE A MAP OF THE ANCILLARY
9 MILITARY FACILITY DEFINED IN SECTION 28-8461 AVAILABLE TO THE PUBLIC IN
10 PRINTED OR ELECTRONIC FORMAT AND SHALL PROVIDE THE MAP IN PRINTED OR
11 ELECTRONIC FORMAT TO THE STATE REAL ESTATE DEPARTMENT.

12 I. THE DEPARTMENT SHALL SUBMIT THE MAP DESCRIBED IN THIS SECTION TO
13 THE COUNTY IN WHICH THE ANCILLARY MILITARY FACILITY IS LOCATED IN EITHER
14 PRINTED OR ELECTRONIC FORMAT.

15 Sec. 19. Applicability

16 Notwithstanding any other law, this act does not apply to property that
17 either is in escrow before January 1, 2005 or is the subject of a pending
18 zoning application filed before January 1, 2005.

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.